

QUARTERLY REPORT
of the
ATTORNEY GENERAL
of
ALABAMA

For the Period:

From October 1, 1936
Through December 31, 1936

VOL. V

TO ALL STATE AND COUNTY OFFICERS OF ALABAMA:

In accordance with an Act of the Legislature of Alabama found on page 1114 of the General Acts of Alabama, Regular Session, 1935, I am submitting to you the Quarterly Report of the Opinions of the Attorney General of Alabama. This report covers all opinions rendered by the Attorney General from October 1, 1936, through December 31, 1936.

The Act referred to above requires that six copies of this Quarterly Report be sent to each of the Probate Judges in the State and that the Probate Judge shall in turn deliver one volume each to the Clerk of the Circuit Court, the Sheriff, the Tax Collector, the Tax Assessor, and the County Superintendent of Education.

Respectfully,

A. A. CARMICHAEL,
Attorney General.

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OPINIONS



October 6, 1936.

Hon. Geo. W. Andrews,
Circuit Solicitor,
3rd Judicial Circuit,
Union Springs, Alabama.

Court of County Commissioners—Acts 1931, page 687, authorizes appropriation of county funds for purchase of athletic equipment for physical training of students in public schools.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your inquiry as follows:

"The Court of County Commissioners of Bullock County desires to make a donation from the general fund of the County of \$250.00 to the Union Springs High School Athletic Association. This money is to be used by the said association for the purpose of purchasing athletic equipment for the High School. Please let me know if this can be legally done."

If I properly construe your inquiry, the Union Springs High School Athletic Association is an agency of a public school of Bullock County and the athletic equipment proposed to be purchased by it will, in fact, belong to the said High School for the exclusive use of its students. Upon such a construction, it is my opinion that your inquiry must be answered in the affirmative.

Of course, if the Union Springs High School Athletic Association is an independent organization, not under the control and direction of, and in fact a part of, a public school of the county; and if the athletic equipment which it proposes to purchase will belong to such association, and not to a public school, an appropriation of public funds to it for any purpose is unwarranted.

Section 1 of Acts 1931, page 687 provides:

"The Courts of County Commissioners or Boards of Revenue of the several Counties of Alabama are hereby authorized at any meeting of said Court in any calendar year to appropriate any funds they may deem proper and expedient out of the general funds of the County Treasury for the support of the Public Schools within said County."

This office has heretofore held that the above quoted act authorizes an appropriation of county funds to any public school for specific school purposes to be decided upon by the county governing body. See Biennial Report of Attorney General, 1932-1934, page 195.

Physical education of students in the public schools of Alabama is a recognized and required part of their curricula. Section 621, Alabama School Code of 1927. And the Division of Physical and Health education of the State Department of Education is required to outline a course of physical training for the various schools of the state. Alabama School Code of 1927, Section 20.

In my opinion an appropriation for the procurement of athletic equipment in furtherance of a course of physical training in a public school is "for the support of the public schools" within the meaning of the 1931 Act quoted, *supra*.

A copy of a former opinion of this office appearing in Opinions of the Attorney General, Office Edition, Book 2-A, page 185, dated February 19, 1935, is enclosed to the end that there may be no question of the proper manner of paying out the appropriation, if made.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 6, 1936.

Hon. E. S. Tunstall,
Tax Assessor,
Baldwin County,
Bay Minette, Alabama.

Taxation—

1. Return of property to the tax assessor, made by an agent for a property owner who is a non-resident, should give the residence and address of the owner, if the same is known by the agent making the return.

2. Failure to give the residence and address of the owner in such a case does not invalidate the assessment and the tax assessor cannot reject such a return because he does not give the owner's residence and address, provided, however, the agent making the return has given satisfactory proof to the assessor that he does not know the owner's residence or address.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of June 30th and your letter subsequent thereto in which you make the following inquiry:

1. Should a return of property made by an agent for a property owner who is a non-resident give the residence and address of the owner of the property?

2. Does the tax assessor have the right to reject such an assessment, if the agent does not give the owner's address?

It is my opinion that your first inquiry should be answered in the affirmative. Section 33 of the 1935 Revenue Act, which deals with return of property for assessment purposes, provides in part as follows:

"Each taxpayer shall give to the assessor his occupation and post office address."

Section 37 of the same Act, which deals with the same subject, provides in part as follows:

"Each person shall enter upon the assessment list his occupation and post office address."

Section 40 of the Act, which deals with the subject of returns made by persons other than the owner, provides in part as follows:

"* * * And shall also as far as practicable give the residence and address of the owner but the failure to give such address shall not invalidate the assessment."

The above quoted provisions of the 1935 Revenue Act lead me to the conclusion that all returns of property to the tax assessor should contain the residence and address of the owner of the property. Therefore, your first question receives an affirmative answer.

My answer to your second question must be conditional. I again call your attention to the excerpt from Section 40 of the 1935 Revenue Act, which I have quoted above. It provides that all returns gathered by an agent for a non-resident property owner should, as far as practicable give the residence and address of the owner, but the failure to give such residence and address will not invalidate the assessment. Before you receive a return of property from an agent of a non-resident property owner without the residence or address of the property owner, you should require him to make satisfactory proof to you that he does not know the residence or address of the owner of the property. A person making a return is under oath to give true answers to all lawful questions put to him by you, touching the return which he makes, as is provided by Section 32 of the 1935 Revenue Act. You should have the agent to answer under oath the question of whether or not he knows the residence or address of the property owner. If his reply is in the affirmative, then you should refuse to accept the return unless the agent gives the property owner's residence or address. If the answer to your question is the negative, then you could not reject the return merely because of its failure to give the residence and address of the property owner and the failure to give his residence and address would not invalidate the assessment.

Therefore, you should not accept a return made by an agent for a non-resident property owner which does not give the residence and address of the owner, unless you are satisfied that the agent making the return does not know the owner's address. If the agent has made satisfactory proof to you that he does not know the residence and address of the property owner, then you should accept the return even though it does not give the owner's residence and address.

It might be well to remind agents who are making returns for non-resident property owners, as well as all other persons who make returns, that they are under oath to give correct answers to all lawful questions propounded by you in connection with the returns which they make, and that they are liable for appropriate legal action for any wilfully false answers or statements which they make in connection with said return.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 6, 1936.

State Milk Control Board,
Hon. Frank M. Stewart, Secretary,
Capitol.

State Milk Control Board—Witnesses—Held to have no authority to pay witnesses.

Bonds—Form of bond complying with Alabama statute held sufficient—no set form.

Opinion by Assistant Attorney General Small.

Dear Sir:

Under date of August 22, 1936, you request my opinion as follows:

"As provided by the Milk Control Act, approved July 9, 1935, your opinion on the following question is requested:

"1. Does the Milk Control Act provide the Board with authority to pay witnesses who appear before the Board as provided in Section 6, and, if so, what is the amount of the fee due said witnesses?

"2. Will you kindly provide us with the proper form of Surety Bond required of distributors as provided in Section 12? Two forms of such bonds have been presented to Assistant Attorney General Small for approval."

In reply, I wish to advise that I find no authority for the State Milk Control Board to pay witnesses. The State Milk Control Board is authorized to subpoena witnesses but, in my judgment, this authority carries with it no authority either express or implied to pay these witnesses any certain sum since no authority is provided by law to pay any sum for witnesses.

70 C. J. 67.

In reply to your second question I wish to advise that Section 12 of the Acts of 1935, page 204, sets out the requirements of the surety bonds required by the Act in the following language:

"Each milk distributor buying milk from producers for resale or manufacture shall execute and file a bond, unless relieved therefrom as hereinafter provided. The bond shall be upon a form prescribed by the Board, shall be in the sum fixed by it, but not less than Two Thousand Dollars (\$2,000.00) shall be executed by a surety company authorized to do business in this State, and shall be conditioned for the prompt payment of all amounts as and when due producers for milk sold by them to such licensee during the license year. The bond shall be approved by the Board."

I suggest the following form of bond which, in my opinion, will meet the requirements of the laws of Alabama:

"FORM OF BOND

"KNOW ALL MEN BY THESE PRESENTS, That.....
 of Alabama, trading as
 as principal, and....., as Surety,
 are held and firmly bound unto.....
 as members of the State Milk Control Board of Alabama in the amount
 of Dollars, lawful
 money of the United States, for the payment of which we hereby bind
 ourselves and our heirs, executors, administrators and assigns firmly by
 these presents.

"THE CONDITION OF THIS OBLIGATION IS SUCH, THAT
 WHEREAS said, trading as
 has applied for a license as dis-
 tributor of milk in, State of
 Alabama, for a period beginning..... and ending

"NOW, THEREFORE, If said principal shall pay within fifteen (15)
 days after each delivery period, all amounts due for milk delivered by
 producers to the principal during the effective period of this bond then
 this obligation to be void; otherwise to remain in full force and effect.

"The total aggregate liability of the Surety for all claims under this
 bond and any renewals thereof shall not exceed
 Dollars.

"The Surety may terminate its future liability on this bond at any
 time by giving thirty days (30) days' notice in writing to the State Milk
 Control Board of Alabama at, A copy of which
 shall be sent to the State Milk Control Board, Montgomery, Alabama.

"WITNESS our hands and seals this..... day of
, 193.....

..... (L.S.)

Trading as

By"

Of course, you understand that the form of bond herein mentioned is
 to be approved by the Milk Control Board as per the requirements of the
 law above quoted.

Yours very truly,
 A. A. CARMICHAEL,
 Attorney General.

October 6, 1936.

Hon. A. H. Collins, Commissioner,
State Department of Public Welfare,
Montgomery, Alabama.

Property of Alabama Relief Administration may be sold by Governor and funds used for relief.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

In your letter of September 17th you requested an opinion, as the Governor's representative, as to whether the Alabama Relief Administration with the approval of the Governor can sell such property as it holds and which is no longer needed for relief purposes, and place the funds to the credit of the Alabama Relief Administration to be administered by it for the Governor. I assume that the property in question has been purchased with funds furnished to the Governor of Alabama by the Federal Government for relief work in this State.

If this is correct, the Governor is responsible for this property and for these funds. He is required to make a proper accounting, and on him alone is placed the responsibility for administering the relief funds. The Governor, by proclamation, created the Alabama Relief Administration and appointed the members of this administration and the director to handle the administration of these funds. This Relief Administration was not created by statute. The Relief Administration is, therefore, the direct agent of the Governor and has no authority except as it receives authority from the Governor.

The relief funds were not deposited in the treasury of the State of Alabama, were not paid out on appropriations of the Legislature, and were not paid out on warrants of the State Comptroller. They were deposited to the credit of the Relief Administration, and were paid out on orders of the Relief Administration under the authority given by the Governor. When property was purchased the property became the property of the Relief Administration taking the place of the relief funds.

In the case of *Wiseman v. Dyess*, 72 S. W. (2d) 517 (Arkansas 1934) the court held that automobiles and trucks purchased with funds made available to the State by Federal Emergency Relief Administration belonged to the United States and did not become the property of the State.

I am of the opinion, therefore, that when the property is no longer needed, the Governor, acting through the Relief Administration, may sell the property and place the funds to the credit of the Relief Administration to be used with the approval of the Governor in furnishing relief and to be finally accounted for by him.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 6, 1936.

Hon. E. T. Carpenter,
Clerk, Circuit Court,
Washington County,
Chatom, Alabama.

A trial tax of \$3.00 is imposed on each case, civil, criminal and equity, which goes upon the docket of any Circuit Court in this State.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 15, 1936, in which you request my opinion as follows:

"The auditor has charged me a \$3.00 trial tax (which I did not collect from the parties) in a case where a suit was dismissed before trial by consent of the parties. I would like to know whether under the facts I am liable for the trial tax "

It is my opinion you should have collected this tax. I call your attention to Revenue Act, 1935, Section 9, which says in part:

"SECTION 9. A trial tax of three dollars (\$3.00) be, and the same is hereby imposed in each case, civil, criminal and equity, which is now pending and which hereafter goes upon the docket of any circuit court in this State, * * *"

You will note this section does not say on all cases tried in the Circuit Court, but says all cases that go upon the docket of any circuit court in this State. Therefore, I am of the opinion that as soon as the case is filed and goes upon the docket, the trial tax attaches and must be collected.—**Biennial Report of Attorney General, 1930-1932, p. 263.**

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 6, 1936.

Hon. J. P. Mitchell,
Judge of Probate,
Henry County,
Abbeville, Alabama.

Henry County—Transfer of money from general fund to fine and forfeiture fund under Local Act 1919, page 72, should not be made until there is sufficient moneys on hand to meet preferred claims of said county.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 18, 1936, which is as follows:

"A local law, page 73, Local Acts of the Legislature of 1919, Section 3, says that 'The depository of said county shall set apart out of the general fund of said county and transfer same to the credit of the fine and forfeiture fund of said county an amount sufficient to pay the fees herein provided for.

"The 1927 Local Acts, at page 166, says that Sheriff's and Clerk's fees shall be paid in like manner as witness fees.

"The County Financial Control Act causes the Commissioners to divide the County's income into appropriations, and at page 162 and elsewhere in the 1935 Acts a considerable number of preferred claims are set up in classification that include almost all disbursements that are made from the General Fund.

"Up to now the 1919 Local Act has been interpreted to mean that whenever there may be a SURPLUS in the General Fund as much of that SURPLUS as may be necessary shall be transferred to the Fine and Forfeiture Fund if the latter Fund shows a deficit.

"Now it doesn't appear that there is likely to be a surplus in the General Fund of this County for several years to come, and under the Budget Act and the Preferred Claims statute it is probable that the entire income of the General Fund for the next fiscal year will be appropriated for the payment of classified claims, although it is possible that there may be a small residue.

"Certain holders of blocks of witness script and present and former county officials are threatening the Commissioners with mandamus proceedings unless the deficit in the Fine and Forfeiture Fund is liquidated promptly in October of this year with the first money that comes into the General Fund.

"Because of this situation, which threatens to tie up the general fund possibly for some months to come, I would thank you to give me the benefit of your opinion on the following:

"1—Should a sufficient amount of money be transferred from the General Fund to the Fine and Forfeiture Fund to liquidate the indebtedness of the latter Fund regardless of whether their would be a sufficient amount left on the General Fund to pay temporary loans for which the first tax money has been pledged, to make payment on the funded debt, and to meet appropriations in the preferred claims classification, or

"2—Should this amount of money be transferred to the Fine and Forfeiture Fund when it is disclosed that there is a surplus on hand over and above funds needed for purposes stated in '1'?"

I am of the opinion that your first inquiry should be answered in the negative. These expenses are primary claims against the county fixed by law. The order of preference is set out in Section 231 of the Code of 1923 as subsequently amended by Acts 1923, pages 162 and 990. There is nothing in the Local Act of 1919, page 72 (which authorizes the transfer from the General Fund to the Fine and Forfeiture Fund of the County) that makes same a preferred claim. In as much as the Local Act in question is silent

as to the matter of preference of the claims therein dealt with, it is my opinion that they are inferior to all other preferred claims against the county which have a definite order of priority fixed by law. (See Quarterly Report of Attorney General, Volume 2, page 16).

I am of the opinion that your second inquiry should be answered in the affirmative. If there be sufficient moneys on hand to meet the claims set out in question and there is a surplus over and above funds needed for those preferences, the transfer as authorized by Local Act in question should be made.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 6, 1936.

Hon. J. H. Williams,
Superintendent of Banks,
Montgomery, Alabama.

Bank properly organized prior to amendment of Section 6336 of the Code which has increased its capital stock, may reduce such capital stock, provided such reduction is now below that required at time of its organization and other requirements of law are complied with.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter stating:

"You will recall Section 6336 of the Code of Alabama of 1923 was amended in 1931 which increased the capital requirement for banks doing business in Alabama.

"There is a bank under my supervision, which was doing business at that time with capital which fully met the provisions of the statute. The capital of the bank in question was increased on June 23, 1934, but such increase was not sufficient to meet the provisions of the amended section for the organization of a new bank at that point. The capital adjustment in the case before us was made in keeping with the provisions of Section 6341 as amended.

"Your opinion is desired as to whether or not under these provisions this bank may now legally reduce its capital back to the amount which it had in 1931?"

"In reply, I advise:

Section 6336 as amended by Acts 1931, page 392, says "No bank hereafter organized, shall have a capital stock of less than"—then follows the scale graduated according to the population of cities.

This amendment substantially increases the minimum requirements for banks "hereafter organized". It is clear that it has no application to banks

previously organized so far as requiring an increase of capital stock is concerned.

Section 6341 as amended by Acts 1931, page 757, provides a method for increasing and decreasing capital stock of banks. Section 1 concludes with this provision:

"If such decrease of capital stock does not reduce the capital below the minimum amount required by law, the Superintendent of Banks may approve the same by attaching his certificate of approval in writing, in duplicate, one being filed in his office, and the other forwarded, along with the certificate, to the Probate Judge of the County for record, at the expense of the institution affected. In no case, however, shall the capital stock of a bank be decreased below the minimum amount required by law for the incorporation of banks in this state."

The question is admittedly a close one, and one on which I have been unable to find any pertinent authority. The language will, therefore, have to be read in the light of history and the purpose of the legislature as gleaned therefrom. Section 6336 was approved July 2, 1931, the act amending Section 6341 was approved August 4, 1931. A further act amending Section 6340 providing for reduction of book value of capital stock etc. in case of impairment, was approved July 31, 1931 (Acts 1931, page 825).

Section 1 of this amendment concludes:

"However, nothing in this Section shall be construed to prevent a bank from reducing its capital stock in the manner now authorized by law."

These acts were all passed as a part of the same general legislation, by the legislature and were approved within short periods of each other. They are to be considered together as general amendments to the banking statutes, rather than as unrelated enactments.

As stated above, the amendment to Section 6336 has no effect on banks previously organized, so far as requiring an increase of capital stock. Does it, if a bank previously organized desires to increase its capital stock, necessitate that such increase be sufficient to equal the minimum required by Amended 6336? Clearly not, the amendment applies only to banks **hereafter organized**.

But may a bank previously organized, with a capital in excess of the minimum required at the time of organization, reduce its capital stock, when its capital stock is below the minimum now required for the organization of new banks. Does the quoted portion of Amended Section 6341 forbid? I do not so interpret it. What is the "minimum required by law". It seems to me that the phrase must apply to the minimum required by law at the time of the bank's incorporation. The last sentence of Section 1 of the amended act stating:

"If such decrease of capital stock does not reduce the capital below the minimum amount required by law, the superintendent of Banks may approve the same by attaching his certificate of approval in writing, in duplicate, one being filed in his office, and the other forwarded, along with the certificate, to the Probate Judge of the County for record,

at the expense of the institution affected. In no case, however, shall the capital stock of a bank be decreased below the minimum amount required by law for the incorporation of banks in this state,"

is almost in the exact words of Section 6341 as it appears in the 1923 Code.

This fact argues strongly that there was no change of legislative intent. It is reasonable to assume that if the legislature had desired to prohibit banks, legally organized but whose capital stock is under the minimum fixed by the amended Section 6336, from reducing their capital stock, it would have done so by positive language and not merely repeated the former language of the statute.

Moreover, almost simultaneously, by the amendment to Section 6340, it provided reduction of par value of capital stock in case of impairments and declared that "nothing in this section shall be construed to prevent a bank from reducing its capital stock in the manner now authorized by law".

This was approved five days before the amendment to Section 6341. With this provision so fresh in their minds, it seems reasonable to assume that in amending Section 6341, the legislature did not intend to limit a right expressly reserved by it five days before by merely repeating language already in Section 6341.

It seems a fair conclusion that the amendment to Section 6336 applies to banks organized after July 2, 1931, and that "minimum required by law" as used in Section 6341 applies to the minimum required at the time of organization.

It is, therefore, my opinion that the bank you describe may legally reduce its capital stock, all other questions meeting the requirements of law and your approval.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 6, 1936.

Hon. G. H. Boyd, Register,
Circuit Court, Jefferson County,
Birmingham, Alabama.

Costs in an injunction proceeding to abate a nuisance are paid under Section 4682, Code of Alabama, 1923, and not under Section 6518 of same Code.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 14, 1936, in which you request my opinion as follows:

"I have read with interest your opinion dated January 17, 1936, addressed to Hon. C. H. Keller, Register, Circuit Court of Cullman County,

as recorded in the Quarterly Report of the Attorney General of Alabama, Vol. 2, page 57, with reference to the court costs on injunctions filed in Equity, wherein the State of Alabama is Complainant against persons operating liquor nuisances.

"In the opinion you state that the State of Alabama is not liable in the above mentioned cases when the Court fails to tax the costs against the State, even though the case has been dismissed by the State.

"I would appreciate an official opinion on the following:

"In injunction cases filed in this Court wherein the State of Alabama is Complainant against persons operating liquor nuisances and where the Court has rendered decrees dismissing the cases for want of prosecution and taxed the court costs against the State of Alabama.

"Please advise me whether or not the State is liable for the Court costs in the aforesaid cases.

"In the event you hold that the State is liable for the costs, I would appreciate it very much if you will advise me to whom the cost bills should be sent."

In answering your request, I call your attention to Section 4682, Code of Alabama, 1923, which is as follows:

"4682. Fees and allowances to officers making seizures when and how paid.—There shall be allowed the officer making the seizure under such writ in an injunction case the sum of three dollars and the sum of ten cents for every mile traveled in making the seizure, together with such reasonable sum as the court may deem just for necessary expenses incurred in transporting and providing storage for liquors and beverages and other movable property seized; all which costs shall be taxed in the bill of costs, and if not collected from a defendant, then shall be taxed and paid as in criminal prosecutions in which the state fails; and the costs in such injunction case, unless charged against some party defendant by the court and collected from him, shall be paid as in criminal cases in which the state fails, upon the court making an order to that effect."

I especially call your attention to the latter part of this section which says:

"* * * and the costs in such injunction case, unless charged against some party defendant by the court and collected from him, shall be paid as in criminal cases in which the state fails, upon the court making an order to that effect."

I take this to mean that if the State fails for any cause and the costs are not taxed against some party defendant by the Court and collected from him, then the costs shall be paid as in criminal cases in which the State fails. It is true, in your case the Court simply dismissed the case for want of prosecution and taxes the costs against the State where Section 4682, supra, says: "* * * upon the court making an order to that effect," and the order of the Court here does not go to this extent, but I think this section, so far as the costs are concerned, is exclusive, and when the costs are taxed against the State and nothing more this is sufficient to bring it under the terms and operation of Section 4682, supra, which in its last analysis means

such costs must be paid from your Fine and Forfeiture fund.—**State ex rel. Wm. H. Holcombe, Jr. v. Geo. E. Stone, Treasurer**, 155 So. 636; **Quarterly Report of Attorney General**, Vol. 2, p. 57.

I do not think the section you refer to above, that is Section 6518, Code of Alabama, 1923, is applicable in cases of this character as Section 4682, *supra*, means to be exclusive in such matters.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 6, 1936.

Hon. Ray Henson, Chief Clerk,
Automobile Department,
State Tax Commission,
Capitol.

Motor vehicles —

(1) The provisions of Schedule 158.15 of the 1935 Revenue Act as amended by Acts 1936, p. 208, do not relieve a carrier otherwise so required from complying with the requirements of Common Carrier Act of 1931 (Acts 1931, p. 303), or the Contract Carrier Act of 1932 (Acts 1932, p. 178).

(2) Opinion to Wm. F. Black, dated Jan. 22, 1936, withdrawn.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 25, 1936, in which you ask that I review opinion of January 22, 1936, to Hon. Wm. F. Black of the Public Service Commission, holding that a non-resident contract carrier may enter State by complying with Schedule 158.15 of the 1935 Revenue Act, which Schedule I may add was amended by Act No. 177, approved April 21, 1936 (General Acts 1936, p. 208) without obtaining permit required by Section 5, H. B. 113 (General Acts 1932, p. 180).

Upon further consideration I am of the opinion that said opinion was laid in error.

Since 1911 the State of Alabama has had a statute regulating the licensing of motor vehicles. This was reenacted in full in 1923 (Acts 1923, p. 284) and by Section 22 of said Act it was provided in part:

"The registration fee or license tax herein required to be paid on motor vehicles shall be in lieu of all other privilege or license taxes which the State or any county or municipality might impose, where the motor vehicle is used by the owner * * *."

This Act with certain amendments continued to be the Act providing for revenue and providing for **registration of motor vehicles** and providing the license fee therefor until the passage of the General Revenue Act of 1935

which carried as a complete reenactment the Act of 1923 with amendments and changes, which appears as Article XIII, Chapter 6.

This Chapter carried as a part of Schedule 158.18, the same provision, which appeared in the 1923 Act and quoted as authority in the former opinion, to-wit:

"The registration fee or license tax herein required to be paid, on motor vehicles shall be in lieu of all other privilege or license taxes which the State, or any county or municipality thereof might impose, where the motor vehicle is used by the owner."

It is to be observed that all these provisions relate to the licensing and registration of motor vehicles rather than the regulation of the business of the carrier.

Under said Chapter 6, every motor vehicle therein defined must secure and display a registration tag with certain exceptions.

Among those exceptions are those found in Schedule 158.15. It is to be noted, however, that the exceptions are applicable only to "the foregoing sections relative to registration and display of registration numbers", negating any idea that the exceptions apply to any other provisions of law.

Subsequent to the 1923 Motor Vehicle Act and prior to the 1935 General Revenue Act, Act No. 273, approved June 19, 1931 (Acts 1931, p. 303) and Act No. 159, approved October 28, 1932 (Acts 1932, p. 178 were enacted.

The 1931 Act commonly known as the "Common Carrier Act" defines transportation companies and motor transportation companies, and provides for their **supervision, regulation** and taxation.

The 1932 Act defines "Contract Carriers" and Common Carriers not subject to the 1931 Act and regulates the transportation for hire of persons and property on public highways by motor vehicles operated by contract carriers, provides for issuance of permits, posting of bonds, etc.

While both Acts levy mileage taxes, they are both essentially regulatory in their nature and are directed at the persons operating as carriers rather than at the motor vehicle itself. The contract act specifically declares that the excise tax levied is under the **police power** of the State (Section 22).

There is nothing, as I read the two Acts, limiting or changing the liability of the motor vehicle itself from securing the proper motor vehicle license as levied by the revenue laws, except this provision found in Section 22 of the 1932 Act.

"The taxes imposed by this section shall be increased 50% if the annual license tax prescribed by the law of this State on like vehicles is not paid because such motor vehicle is engaged in interstate commerce."

The only reason I can offer for this provision is that it was inserted out of excess of precaution. The State in requiring a license of motor vehicles operated on the public roads of Alabama is exacting a charge for the use of such roads. **Foshee v. State**, 15 Ala. App. 113, 72 So. 685; **Bozeman v. State**, 61 So. 604; **Ex Parte Bozeman**, 183 Ala. 91-103, 63 So. 201. That a state may levy such a charge on motor vehicles moving in interstate com-

merce is no longer in doubt. **Kane v. N. J.** 242 U. S. 160; **Hendrick v. Maryland**, 235 U. S. 610; **State v. Oligney**, 162 Minn. 302, 202 N. W. 893, 42 C. J. 670.

However, Section 22 also provides:

"Such mileage tax shall be paid by such common or contract carrier **in addition** to all other property, franchise, licenses, or other taxes, fees and charges now or hereafter prescribed by law."

It seems plain from this that there was no purpose to disturb the laws relating to licensing of motor vehicles.

Among the regulations of the 1932 Act is that the carrier secure a permit as provided in Sections 5 to 13 inclusive, and make a bond as required by Section 26.

It is to be noted as stated above that these sections require the carrier to secure the permit and make the bond, and this is true whether he operates one or more motor vehicles.

The question then arises whether the issuance of the license permit authorized by Schedule 158.15 can relieve a contract carrier from qualifying under the 1932 Act, take out the permit therein required and make appropriate bond.

In my judgment it clearly has no such effect nor can the statute be so interpreted.

I think it is clear from the foregoing that a person taking out the full year's revenue license for a motor vehicle is not thereby relieved from qualifying as a common or contract carrier if he engages in such business, including of course securing carrier permit.

Schedule 158.15 as amended by Act No. 177, approved April 21, 1936 (General Acts 1936, p. 208) provides:

"Schedule 158.15. The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this State and not used for hire or used for commercial purposes in this State, for a period of 30 days from date of entering the State, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, State, territory or Federal district of his residence relative to registration of motor vehicles and the display of registration numbers thereon, and shall conspicuously display his registration number as required thereby; Provided further than nothing herein shall be construed to permit the use of motor vehicles for hire or for commercial purposes by non-residents without complying with the provisions of this Act. Provided further, that motor vehicles of non-residents used for commercial purposes and making not more than two trips per month, each trip to be of not more than five days duration, may secure permit from the probate judge of the first county in this State which he enters, under such rules as the State Tax Commission may prescribe and upon the payment to the probate judge of a permit fee of \$1.00 and an issuance fee of 50c which permit shall grant the holder thereof two trips as above set forth during the month in which said permit is issued. **Provided, that motor vehicles of non-residents used for hire and making**

not more than three trips during any period of three months in this State and which pay all mileage taxes required by law, may secure a permit from the State Tax Commission under such rules as the State Tax Commission may prescribe and upon the payment of a Five Dollars (5.00) fee and an issuance fee of 50c for each trip to the probate judge; of the first county entered in this State provided each trip shall be reported to the State Tax Commission and said probate judge and no such motor vehicle shall make more than three trips in this State during any three month period and no such motor vehicle shall carry anything but goods to be transferred from without the State to points within the State, but such motor vehicle may, on its return trip, secure permit from a probate judge after the additional payment of Five Dollars (\$5.00) and an issuance fee of 50c, to carry goods on its return trip from points within Alabama to points without Alabama. Said permit shall be issued for a specified motor vehicle and shall not be transferable to any other person or any other vehicle. The State Tax Commission of Alabama is hereby authorized to make reciprocal agreements with other states for an exchange of rights for the operation of motor vehicles that will be considered as a fair exchange of rights and privileges. The said rights and privileges to be in effect as long as both contracting parties recognize the rights of the other. The above reciprocal agreement can be annulled on a notice issued to either party by the other party thereto within thirty (30) days thereafter."

Schedule 158.15 is a part of Article XIII, Chapter 6, of the General Revenue Act of 1935, relating to the licensing of motor vehicles and its provisions constitute exceptions to the general requirements made therein.

Therefore no greater incidence can be given to the exception, than applied to the general provision. In fact that well known rule that exceptions and exemptions are to be strictly construed (See *Elba Bank & Trust Co. v. State*, 91 So. 991) should be invoked if the matter were in doubt.

I do not think the matter is one of doubt however.

The provision allowing a non-resident operating a motor vehicle for hire, and making not more than three trips into the State within a period of three months to secure a permit from the State Tax Commission and pay \$5.00 and an issuance fee to the Probate Judge, is purely an exception to liability for full motor vehicle license, which, but for this exception, would be due, when the motor vehicle used for hire, enters upon the public roads of Alabama. This so-called permit and \$5.00 payment, is nothing more nor less than authority for the issuance of a license for temporary use, limited strictly by the terms of the statute, and exempts the person securing such temporary license from the general liability for motor vehicle license for the limited period authorized.

The Tax Commission could if it desired under its powers to make rules and regulations, provide a tag, indicative of the granting of the permit and the payment of the amount levied.

So construed however, I read nothing in Section 158.15 relieving a carrier, who otherwise is required to so do from qualifying under the common or contract carrier acts.

I therefore hold that a carrier required to qualify under either the common carrier act of 1931 or the contract carrier act of 1932, is not relieved from such liability, by taking out motor vehicle license required by Article XIII, Chapter 6 of the 1935 Revenue Act and specifically by securing the permit and paying the amount, as authorized by Schedule 158.15 of said Article, Chapter and Act as amended.

The opinion to Wm. F. Black of January 22nd, 1936, above referred to is accordingly overruled and withdrawn.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 6, 1936.

Hon. E. C. Whelan,
License Inspector,
Jefferson County,
Birmingham, Alabama.

Licenses—Under facts stated person taking out license under Schedule 13 of the 1935 Revenue Act, also liable for a license under Schedule 16.

Opinion by Assistant Attorney General Kohn.
Dear Sir:

I wish to acknowledge receipt of your letter of recent date in which you request my opinion as follows:

"Would you please interpret Schedule 16 of the Revenue Acts of 1935. That is, if a person selling automobile springs exclusively, and paying an automobile repair shop license under Schedule 13, would they be due a license under Schedule 16? Also, would a person, selling automobile piston rings exclusively, owe a license under Schedule 16?"

In my opinion the person selling automobile springs exclusively and paying a license under Schedule 13 would also be liable for a license under Schedule 16 unless the stock of accessories, including automobile radios and/or motor vehicle parts, and/or tires does not at any time exceed the wholesale value of seventy-five dollars.

The person selling piston rings exclusively would have to comply with Schedule 16, as said schedule specifies accessories, and/or motor vehicle parts.

Schedule 16 of the 1935 Revenue Act provides as follows:

"SCHEDULE 16. Each person selling motor vehicle accessories, including automobile radios, and/or motor vehicle parts, and/or tires, shall pay the following annual license: In cities of over one hundred thousand (100,000) inhabitants, forty dollars (\$40.00); in cities of over twenty-five thousand (25,000) inhabitants and not over one hundred thousand (100,000) inhabitants, thirty dollars (\$30.00); in cities and towns of over five thousand (5,000) inhabitants and not over twenty-five thousand (25,000) inhabitants, twenty dollars (\$20.00); in cities and towns of over two thousand (2,000) inhabitants and not over five

thousand (5,000) inhabitants, ten dollars (\$10.00); in all other places whether incorporated or not five dollars (\$5.00). Provided regularly licensed filling stations or garages are not required to pay the above accessories license if their stock of accessories at any time does not exceed the wholesale value of Seventy-five dollars (\$75.00)."

The schedule, supra, applies to all persons selling motor vehicle accessories, including automobile radios, and/or motor vehicle parts, and/or tires, except that regularly licensed filling stations or garages are not required to pay the accessories license provided their stock of accessories, including automobile radios, and/or motor vehicle parts, and/or tires at any time does not exceed the wholesale value of Seventy-five dollars.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 6, 1936.

Hon. J. F. Posey,
Judge of Probate,
Autauga County,
Prattville, Alabama.

Licenses—County license per day as prescribed by Schedule 149 of the 1935 Revenue Act is one-sixth of one-half of the amount of the State license for week.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of September 3, 1936, in which you state:

"Will you please give me an opinion on Schedule 149 of the Revenue Law of 1935.

"If one of these shows should want to operate in this County and had taken out the \$25.00 license for the State, which is required for each week's operation, what should I charge him for one day or for each day for any number of days that he might want to operate in this County?"

In my opinion the State license under Schedule 149 of the 1935 Revenue Act is \$25.00 for one week, composed of six ~~working days and~~ Sunday. Quarterly Report of the Attorney General, Vol. 2, at page 44.

I wish to call your attention to Schedule 149 and part (b) of Section 350 of the 1935 Revenue Act, which provide as follows:

"Schedule 149. Each person operating or conducting vaudeville, and/or theatrical shows as transient, operating temporarily in different places in tents or otherwise, shall pay to the State a license of twenty-five dollars (\$25.00) per week for such show. A separate license shall be taken out for each week of operation. No County in collecting said

license for said County shall charge a license, except for the number of days said shows operate in said County, and that license shall be in proportion that the days shown in said County bears to the weekly license. Provided that this section shall not apply to any show operating in a theatre regularly licensed."

"SECTION 350. * * * (b) There is also hereby levied for the use of each county in the State a license or privilege tax upon each person, firm or corporation engaged in, or who shall carry on any of the occupations, business, professions, or callings, or shall exercise any privilege or do any act for which a license is charged by the State, of fifty per cent of the State license or privilege tax, except as herein otherwise provided."

The county license for one week should be \$12.50 or one-half of the State license for the same period.

The amount of the county license shall be the proportion the days operated in the county bears to the weekly license. In other words, if the show operates one day in the county, the license should be one-sixth of \$12.50, or \$2.08.

Yours very truly,

A. A. CARMICHAEL,

Attorney General.

October 6, 1936.

Hon. Eugene H. Hawkins,
Judge of Probate,
Jefferson County,
Birmingham, Alabama.

Filing Tax—Koehler Manufacturing Company contract is a conditional sales contract and not a lease and the filing tax on said contract should be paid as provided by Schedules 46 and 94 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of September 13, 1935, in which you state:

"I am enclosing copy of a contract from Koehler Manufacturing Company to Porter Coal Company.

"You will note from Section 1, that the Lessor agrees to lease and rent to Lessee, and in Section 2, the Lessee agrees to pay the Lessor a certain amount for the property, and also in Section 7, the Lessor will execute a bill of sale to the Lessee upon the full payment of this contract.

"Will you please advise, at your earliest convenience, just what tax should be collected."

I have carefully examined the contract of the Koehler Manufacturing Company, and it is my opinion that said contract is a conditional sales contract and not a lease.

"In determining whether a particular contract amounts to a conditional sale or a lease, the fact that the aggregate of the instalments to be paid as rent up to the time the lessee may become the owner of the property is equal to its value, is a matter of no slight importance, and is uniformly given prominence by the courts in their consideration of the contract's controlling features. While such a fact is not conclusive as to the intention of the parties, it goes far to show that their real purpose was to enter into a contract of conditional sale, rather than a lease.

"Parties have frequently inserted in their contracts, which purport to be leases, a clause providing that after the designated instalments of rent have been paid, the lessee may become the owner of the property by paying, in addition, a nominal sum, usually one dollar. Such a term is of no significance to the courts in construing the contract. It is a mere matter of meaningless form, and can, in and of itself, have no effect to convert a contract that, by all its other prominent terms is a conditional sale, into a lease."

Jones on Chattel Mortgages and Conditional Sales, Vol. 3, p. 960.

It was said in **Russell v. Martin**, 232 Mass. 379, 122 N. E. 447:

"* * *where, as in the case at bar, a chattel is hired for a stipulated sum, a part of which is paid in cash when the bargain is struck, while the remainder is to be paid in instalments according to the terms of eight promissory notes given as collateral security for the price, each of which is for the amount of one instalment, but the title is not to pass until payment of the entire price, and upon default in payment of any instalment the lessor has the right to take immediate possession, the transaction is not a lease but a conditional sale."

As the contract of the Koehler Manufacturing Company is a conditional sales contract the deed tax should be collected on the cash down payment and the mortgage tax on the balance remaining unpaid.

I refer you to an opinion of this office under date of June 4, 1935, to Hon. Frank O. Deese, Judge of Probate, Dale County, Alabama, a copy of which is enclosed for your convenience.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 6, 1936.

Hon. B. F. Burch,
Tax Collector,
Russell County,
Seale, Alabama.

Under the authority of *Underwood Typewriter Company v. Marengo County Bank*, 82 So. 158 it is the duty of the Court of County Commissioners, Boards of Revenue or other like governing body to furnish typewriter to Tax Collector of various counties of the State.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 10, 1936, in which you request my opinion as follows:

"I am Tax Collector of Russell County and as such officer I am compelled to have a typewriter in my office. When I took office last October, the County Commission refused to furnish me with a typewriter, so I went ahead and bought one myself and paid for it. The County Commission furnishes a typewriter to every County officer except me and I am writing to ask you if there is any way to force them to pay for the one that I bought myself."

I am not saying whether or not you can compel the county to pay you for a typewriter you have already purchased and paid for but there is no question but that it is the duty of the county to furnish you with a typewriter under Section 9604 Code of Alabama of 1928 (Mitchie) which is as follows:

"9604. STATIONERY OF OFFICERS PAID FOR BY COUNTY.—

The judge of probate, tax assessor, tax collector, register of the circuit court in equity, clerk of the circuit court, sheriff and the county treasurer or custodian must be allowed reasonable expenses, for suitable books, stationery, postage stamps used exclusively for official business, and telephones to be paid for by the county, on the approval of the court of county commissioners, board of revenue or other like governing body, and the judge of probate shall also be allowed expense for his seal of office, to be paid for by the county."

Our Supreme Court in the case of Underwood Typewriter Company vs. Marengo County Bank, 82 So. 158, held that the term stationery as now used in Section 9604, supra, includes typewriter. Therefore, under the authority of the above cited case, there is no doubt but it is the duty of Russell County to furnish you a typewriter as Tax Collector of said County. (Biennial Report 1928-30, Page 222.)

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 6, 1936.

Hon. E. E. Gewin,
Tax Assessor, Hale County,
Greensboro, Alabama.

Bail—Tax Assessor prohibited from signing an appearance bond.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of August 26, 1936, in which you state that you are Tax Assessor of Hale County, Alabama.

You request my opinion:

"Can I, individually, sign an appearance bond for a defendant who is charged with a criminal offense?" ' ' ' '

In my opinion your inquiry should be answered in the negative.

Section 3378 of the 1923 Code of Alabama forbids any judicial or ministerial officer of this State to go bail for any person charged with a criminal offense. This section reads as follows:

"Section 3378. Certain forbidden to become bail in certain cases.—It shall not be lawful for any judicial or ministerial officer of this state to go bail for any prisoner or other person tried before him, or put in his charge under any criminal accusation, or to sign any bond or other obligation for the release or appearance of such person, either before himself or any other officer or officers."

In my opinion, a tax assessor comes within the prohibition of the statute, supra. A tax assessor is both a judicial and a ministerial officer. For listing property, taking oaths, making abstracts, etc., his duties are ministerial. When he values and assesses same he acts judicially.

This office has previously ruled that a clerk of the Circuit Court was a ministerial officer of the State, and as such was prohibited from signing a bail bond.—Biennial Report of Attorney General, 1928-1930, p. 747.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 7, 1936.

Hon. W. M. Vaughan,
Probate Judge,
Dallas County,
Selma, Alabama.

Counties—County Jails—Constitutional debt limit—

Under facts set out County of Dallas held authorized to purchase jail and the contract proposed held not to create debt within the meaning of Section 224 of the Constituion.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 25th in which you state:

“The City of Selma proposes to build a new City building, and provide a jail for County prisoners on the third floor, which is the top floor. The City proposes to sell us this jail (third floor) for a reasonable consideration, payable yearly. The yearly payments are to be provided for in our annual budget. The County shall be under no legal obligation to make any payments except for the current fiscal year it occupies the building, but may quit the premises, without further obligation, at the

end of any fiscal year. At the end of twenty years, the City will convey the jail to the County, if payments are kept up.

"As we see it, this proposition involves only the right of the County to **purchase** a jail, and does not create any debt whatever, except the actual annual payment.

"Please advise your conclusion as to this proposition and oblige."

In a previous letter relative to this matter you stated that "Dallas County's bonded indebtedness at this time (due to the lowering of tax valuation in the past five years) is in excess of the constitutional debt limit". I assume, therefore, that the purpose of your present request is to ascertain if, in my opinion, your proposed plan creates a debt within the meaning of Section 224 of the Constitution.

It is my judgment that it is a mandatory duty of the county under Sections 210, 212 and 215 of the Code of 1923 to provide adequate jail facilities. Therefore, in determining whether the expenditure for any particular year is authorized is to a large extent to be determined by the nature of the expenditure, to-wit, whether it is in payment of a voluntary or involuntary obligation. In an opinion to Hon. Henry Naish, Treasurer of Shelby County, under date of August 3, 1936, it was stated:

"In dealing with the question of the payment of obligations by a county which had reached its constitutional debt limit our Supreme Court in the case of *Brown v. Gay-Padgett Hdw. Co.*, 188 Ala. 423, 66 So. 161 stated as follows:

" * * * Legitimate county debts or obligations are of two classes:

(1) Those which are prescribed and imposed by law, and are purely involuntary as to the county; (2) those which are merely authorized by law, and are assumed by the county with some measure of discretion, at least as to time and amount.

"Section 153 of the Code (1917) makes a number of specified county obligations preferred claims against the general treasury, and requires the treasurer to set aside sufficient funds for their payment. We think also that, by necessary implication, whenever the assessed revenues of an overburdened county are not sufficient for the payment of all current county obligations, those involuntary obligations which are fixed and imposed by law must be regarded as preferred claims of a second class, which are entitled to precedence over the general and voluntary obligations of the county.

"As a result of the foregoing considerations, we hold that a county which is indebted up to the constitutional limit may nevertheless appropriate its anticipated revenues actually assessed for the payment of its ordinary current obligations incurred during and for the year for which such revenues are assessed and payable; that the obligations absolutely fixed by law are preferred claims; and that all voluntary obligations assumed or incurred after the exhaustion of the full amount of revenues on hand or in valid expectancy are debts which are repugnant to the Constitution, and are therefore invalid as to their payment.

"We think it is clear, also, that such a county cannot borrow money even to provide funds for current and necessary municipal expenses * * *." It is pertinent, we think, to remark that the last paragraph of the quotation from the foregoing opinion is probably modified by Section 239 of the Code.

Section 210 of the Code provides, in part, as follows:

"The county buildings are to be erected and kept in order and repair at the expense of the county under the direction of the court of county commissioners."

Section 212 provides, in part, as follows:

"The court of county commissioners and Boards of Revenue of the respective counties shall erect courthouses, jails and hospitals and other necessary buildings."

Section 215 provides:

"The county jail must be of sufficient size and strength to contain and keep securely the prisoners which may be confined therein; and must contain at least four apartments, properly ventilated, so as to secure the health of those confined therein; one for white men, one for white women, one for colored men and one for colored women."

Section 216 makes it the duty of the Court of County Commissioners to levy a county tax for the erection of a sufficient jail and Section 217 is to the same general effect. I think from the foregoing that it is the mandatory duty of the county commissioners to provide adequate jail facilities. In your previous letter you stated that your present jail had been condemned and the method now suggested present the most practical plan of complying with this mandate of the statute provided the same does not create a debt within the meaning of Section 224.

In my judgment it does not, under the facts stated by you. You stated "the county shall be under no legal obligation to make any payments except for the current fiscal year it occupies the building, but may quit the premises without further obligation at the end of any fiscal year". It is manifest, therefore, that the county is not obligated to pay any sum beyond the current fiscal year and the obligation being an involuntary one, the same may be paid by the county out of its general fund and, if necessary, the county could anticipate its current revenues under the rule set out in *Brown vs. Gay-Padgett Hdw. Co.* and Section 239 of the Code.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 7, 1936.

Hon. O. S. Nichols,
Tax Assessor, Perry County,
Marion, Alabama.

Taxation—Tax Agents.

Revenue Act 1935—Tax agent or representative of Tax Commission not authorized to go through the assessment books or records and raise

the assessment values, but works in an advisory capacity with the assessor and Board of Review.

Board of Review may disregard raised valuations placed on the assessment sheets by a tax agent or representative of the Tax Commission.

If the Board of Review raises a taxpayer's assessment, it is the duty of the secretary, who is the tax assessor, to notify the taxpayer by registered mail.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of recent date in which you state:

"Referring to Section 68, page 34, of the Revenue or House Bill 324, of the Regular Session of the 1935 Legislature.

"Does a State Tax Agent, or representative of the State Tax Commission have the authority, or any authority, to go through the assessment books or records of a county and raise the values of real estate, before the Board of Review or Board of County Commissioners have met to review, inspect, revise or likewise make any changes that they see fit to make, at which time the law requires them to meet for such, which is on the second Monday in March.

"In several instances this agent has gone through the books and raised a taxpayer's land values even before the taxpayer has made his assessment for the current year. This agent or representative of the State Tax Commission would not have any authority to raise a taxpayer's value before he made his assessment, or before the Board had met to make any adjustments if any be needed. He makes the raise by setting his figure in the column for the Board of Review to set their figure if there be any change.

"In the case where this agent has raised Mr. Jones' real estate value by putting the raise figure in the Board of Review column, what would the Board of Review do in case that they find after their review and inspection of this land of Mr. Jones that the preceding value that was paid on the year before was 60% of the value and they did not agree on the raise figure entered by this agent.

"When the Board meets in March to review and adjust any taxpayer's assessment and finds that the figure that the taxpayer assessed his property at which was the same figure as 1935, and that this agent has raised the assessment, and the Board unanimously voted to put this assessment value back to the value of 1935 just as the taxpayer had assessed it at, what will be the outcome of this raise figure put there by this agent.

"In the case where this agent makes any raises in value it is his duty to notify each taxpayer that there has been a raise in the value and not the Tax Assessor's duty to notify any taxpayer, this is correct as I see and understand the law. Please give your opinion.

"As I understand the law, the secretary of the Board of Review which is the Tax Assessor, must notify each taxpayer in the event the Board has raised his assessment value, but not the Assessor's duty to notify in the event the tax agent has made a raise."

In my opinion, a State Tax Agent or representative of the State Tax Commission does not have the authority to go through the assessment records of a county and raise the assessment values.

I wish to call your attention to parts of Sections 47, 48, 67, 68 and 73 of the 1935 Revenue Act, which are as follows:

"SECTION 47. The assessor shall, from information entered on the tax return list and from all other information known to him, or which he may procure, proceed to ascertain what, in his best judgment, is a fair and reasonable market value of each item of property returned by or listed to any taxpayer; provided, however, that the assessed value of any real estate or improvements as fixed for taxation for the year next preceding the then current tax year shall be *prima facie* the basis of the value of such property for assessment for the current tax year and such property shall not be assessed for taxation at a less valuation unless upon evidence submitted to the Board of Review, as provided for herein, * * *"

"SECTION 48. The State Tax Commission or the agents or assistants thereof, may work in an advisory capacity, with the several county tax assessors of the State in the assessment and valuation of property. * * *"

"SECTION 67. * * * provided that at any time the State Tax Commission shall deem it necessary, it may go or send or use agents or representatives into any county with authority to act in an advisory capacity and in conjunction with the Board of Review and perform such other duties, with respect to the valuation and assessment of property for taxation as may be required of them."

"SECTION 68. Agents or representatives of the State Tax Commission assigned to any county or counties for the purpose of advising with the Boards of review with respect to valuing real and personal property for assessment for taxation, shall have the power and authority to inspect, review, value and assess any property subject to taxation and such agents or representatives are authorized to fix values for assessment, subject to the approval of the Board of Review of the County in which such property is located. * * *"

"SECTION 73. It shall be the duty of the Board of Review to meet on the second Monday in March and sit as long as may be necessary to carefully examine and inspect all tax returns and assessments delivered to it by the County tax assessor. If the board finds that any taxpayer has neglected to make a return or has omitted from his return any property that should be returned, it shall be its duty to make up a return upon the proper blank, with a description of the property to be assessed, which property it shall then proceed to value and equalize in the same manner as other property is valued and equalized by it, and to the value thus placed thereon shall be added a penalty of ten per cent for failure of the owner of such property to properly return the same. **"

From studying the sections, *supra*, it is my opinion that the Legislature intended for the tax agents or representatives of the Tax Commission to serve only in an advisory capacity with the Board of Review and the Tax Assessor and it was not the intention of the Legislature to set up a dual system of tax assessment by giving the tax agents the authority to examine the records and make their own independent assessments.

If the tax agent has information that a taxpayer's property is undervalued, he should so inform the Tax Assessor and the Board of Review.

"The intention of the Legislature, embodied in a statute, is the law, the fundamental rule of construction, to which all other rules are subordinate, is that the Court, shall by all aids available, ascertain, and give effect, unless it is in conflict with constitutional provisions, or is inconsistent with the organic law of the State, to the intention or purpose of the Legislature as expressed in the statute." 59 Corpus Juris, p. 948. *Street v. Coe*, 207 Ala. 631, 93 So. 591; *Sunflower Lumber Company v. Turner Supply Co.*, 158 Ala. 191, 48 So. 510.

When the Board of Review meets and considers Mr. Jones' assessment, if the Board decides that the assessment made by Mr. Jones the previous year was sixty per cent of the fair valuation of the land, then the Board should agree on the previous year's assessment, and disregard the raised valuation as placed by the tax agent.

The tax assessor acts as secretary for the Board of Review, and it is his duty as such secretary to notify a taxpayer by registered mail when his assessment has been raised by the Board of Review.

Parts of Sections 67 and 47 of the 1935 Revenue Act are as follows:

"SECTION 67. * * * the tax assessors of the several counties shall act as secretary of such board * * *"

"SECTION 47. * * * In the event the value of real or personal property of any taxpayer is increased by the Board of Review, herein created, over the assessed value thereof for the next preceding year the taxpayer shall be furnished by registered mail, return receipt demanded, or in person by the Secretary of the Board of Review, with a statement showing separately the value of his personal property, and his real property, and improvements thereon, such statement to be signed by the Chairman of the Board of Review * * *"

See opinion of this office to you under date of April 9, 1936.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 7, 1936.

Hon. H. M. Hughes,
Clerk, Circuit Court,
Madison County,
Huntsville, Alabama.

Costs: Solicitor's fee in cases of carrying a pistol without a license is \$10.00, as provided by Section 3738 of the 1923 Code of Alabama.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I have your letter of October 5, 1936, in which you request my opinion as to what is the solicitor's fee in cases where the defendant is charged with carrying a pistol without a license?

In my opinion the solicitor's fee should be \$10.00 as provided by Section 3738 of the 1923 Code of Alabama, which provides in part as follows:

"3738. Solicitors' fees—

For each conviction of a misdemeanor, not otherwise provided for
\$10.00."

I have carefully examined the Uniform Firearms Act (Act No. 82 S-63, approved April 6, 1936, General Acts, Alabama Extra Session, 1936, page 51) and find that said Act does not provide for a solicitors' fee. Therefore, the amount of the solicitors' fee for violations of the Act is governed by Section 3738 of the 1923 Code of Alabama.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 7, 1936.

Hon. N. P. Tompkins,
Judge of Probate,
Colbert County,
Tuscumbia, Alabama.

Counties: Gasoline Fund: Long term warrants

1. Counties may borrow money secured exclusively by the proceeds of the gasoline levied by the State and distributed to the counties, without incurring a debt within Section 224 of the Constitution.
2. The County Budget Act does not apply to such gasoline fund.
3. Counties may issue warrants payable at future date out of gasoline fund, and such warrants may or may not be interest bearing.
4. A county may incur indebtedness payable only out of gasoline fund and issue warrants therefor payable at future dates.
5. Counties may apply not in excess of one third of the gasoline tax in payment of debts created prior to March 26, 1936.
6. That the gasoline tax and proceeds of any loans secured thereby must be used exclusively in the construction, maintenance or repair of roads and bridges in the county.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your request for an opinion as follows:

"(1) Please advise me whether the Court of County Commissioners can execute and approve claims for debts that have been incurred by the County for the construction of roads since October 1, 1935, and approve these claims now for payment at a future date and provide that they draw interest to the date of payment, and is it legal for the County to pay interest on debts for road construction which have been incurred since October 1, 1935, and would such claims and interest be promptly payable out of the Gasoline Fund?"

"(2) In the event such debt was incurred after October 1, 1935 and prior to March 26, 1936, the date on which Act No. 51, House Bill 61, by Castleberry, was approved, could an approved claim be executed by the Court of County Commissioners to be paid at a future date be entitled to interest?"

"(3) In the event such debt was incurred after March 26, 1936, could the Court of County Commissioners now approve such claim for payment at a specified date in the future and to draw interest to the date of payment, and when said approved claim becomes due on the future date as set by the Court of County Commissioners, would I be authorized to draw a warrant in payment of said claim together with interest to the date of payment?"

"(4) In the event the Court of County Commissioners should execute and approve such approved claims for debts created after October 1, 1935, and the Resolution of the Court of County Commissioners adopted at the time of the approval of the claim provides that I, as Chairman of the Court of County Commissioners, shall issue a warrant at the time the approved claim becomes due for payment of the claim with interest to the date of payment, would I be authorized to issue said warrant when the same becomes due together with the interest that may accrue thereon without any further order and approval of the Court of County Commissioners at the time the warrant on the County Treasury is issued?"

"(5) Please advise whether a portion of the Gasoline tax can now, by resolution of the Court of County Commissioners, be set aside by the County Treasurer from month to month out of which these claims may be paid, and would such pledge of the Gasoline Tax be legal, and would I be authorized to draw warrant on such Gasoline Fund for such purpose covering the approved claims with interest to the date of payment?"

Involved in your questions are a number of questions which have been raised by other counties and which I think are necessary to a decision in your case.

1. Can a county borrow money secured only by the gasoline tax?

This question was answered affirmatively by opinion to Hon. Chas. S. McDowell, County Attorney, Barbour County, under date of November 7, 1933, Biennial Report of Attorney General, 1932-1934.

Likewise, the Supreme Court in *Re Opinions of the Justices*, 163 So. 105 in passing on Act No. 177, approved July 8, 1935, authorizing counties whose road and bridge fund equalled \$40,000 per annum, to issue interest bearing warrants, debentures or certificates or other like securities against 50% of the county's part of the gasoline tax levied by the State and allocated to the

counties held that said act was a general act and that "the warrants or other securities authorized by the bill did not constitute or evidence debts of the county within the meaning of Section 224 of the Constitution."

Proceeding, the court said:

"They are expressly declared not to be a charge on the general credit of the county, but payable solely from the funds allocated and pledged under the act. The fund thus pledged is part of the proceeds of a state excise tax, levied and collected by the state, and allocated by statute to the several counties for the construction and maintenance of roads and bridges. *Jefferson County v. Hard, Comptroller, et al*, 227 Ala. 201, 149 So. 81.

"These obligations are not a charge on the general revenues of the county, nor on the proceeds of any levy by the county for special county purposes under the Constitution.

"Our recent decisions, construing section 225, a related section fixing debt limits of cities, are applicable in principle to section 224. *Oppenheim v. City of Florence*, 229 Ala. 50, 155 So. 859; *Smith v. Town of Guin et al*, 229 Ala. 61, 155 So. 865."

2. The passage of this Special Act naturally raises the inquiry, did the legislature intend the power therein granted to specific counties to be in derogation or a denial of such power existing in other counties not included within the authority of such Special Act?

I do not think so and such construction is opposed to the opinion given to Barbour County cited above, which opinion has not been overruled.

To the contrary, the same was in effect reaffirmed in opinion to Hon. Chas. E. Bragg, Probate Judge, Lawrence County, under date of September 26, 1936, wherein a loan of \$36,000.00 incurred or proposed to be incurred by the county prior to October 1, 1936, to be paid out of the proceeds of the Gasoline Fund was held legal.

True, certain local acts were involved in this and the companion opinion, but the indebtedness if authorized was under the general authority, the Barbour County opinion, *supra*, being cited, and the local acts merely detailing a specific method of payment.

Moreover, it is not my opinion that a construction long acquiesced and holding a general class has certain authority is repealed by an act of the legislature granting such authority to a portion of such general class. Such an act appears to be merely cumulative. In the absence of specific language denying the power in the remaining members of the class, I am of the opinion that such authority as formerly was theirs was not affected or taken away by said Act No. 177.

3. What is the effect of the County Budget Act of 1935?

(a) In an opinion to Hon. G. H. Howard, Probate Judge, Elmore County, (mms) it was held:

"From the above provisions and from other sections of the act, it seems clear that the intent of the legislature was that the act should

apply only to the general fund as far as its budget provisions are concerned."

Therefore, under the express holding of the office the budget provisions of said act do not apply to the Gasoline Fund.

(b) What though is the effect of Section 7 of said Act which provides:

"No warrant or order for money shall be issued in pursuance of authority of the Board of Revenue, County Commissioners or other like governing body until funds are available for its payment upon presentation to the Treasurer or depository. It shall be the duty of the Board of Revenue, County Commissioners or other like governing body to provide and appropriate funds for paying warrants issued upon orders drawn by other county officials in pursuance of law, which orders are not required by law to be approved and authorized by such Board."

Does this section prevent the issuance of a warrant payable out of the Gasoline Fund at some future date, either with or without interest as the original contract may provide?

It appears to me that for all practical purposes this is settled by the opinion to Judge Bragg above cited. It was there held that a county may borrow money, secured by a pledge of the gasoline tax. This opinion was subsequent to County Budget Act, and hence it was before the office when such opinion was rendered.

The inquiry is, therefore, limited to the one question whether, if the indebtedness is evidenced by "warrants" is their issuance forbidden by said Section 7 of the Budget Act?

What is a "warrant"? In *Littlejohn v. Littlejohn*, 195 Ala. 614, it was stated:

"(1) It must be regarded as settled that the issuance by the authority of a commissioners' court of interest-bearing warrants on the county treasurer, payable at stated times in the future, to pay for public buildings, public roads and bridges, is not the issuance of bonds by the county within the provisions of section 222 of the Constitution; and that commissioners' courts are competent, unless restrained by the debt limit fixed in section 224 of the Constitution (*Hagan v. Com'rs.*, 160 Ala. 544, 49 South, 417, 37 L. R. A. (N. S.) 1027; *Gunter v. Hackworth*, 182 Ala. 205, 62 South, 101; *O'Rear v. Sartain*, 193 Ala. 275, 69 South, 554), to issue interest-bearing warrants of the character above described (*Talley v. Jackson Co.* 175 Ala. 644, 39 South, 167; *Matkin v. Marengo County*, 137 Ala. 155, 34 South, 171).

"(2, 3) A county warrant 'is the command of one duly authorized officer to another, whose duty it is to obey, to pay, from county funds, a specified sum to a designated person whose claim therefor has been allowed by the court of county commissioners.' *Savage v. Mathews*, 98 Ala. 535, 537, 13 South. 328. Such a warrant has not the attributes of commercial paper, and is not assignable, so as to be made the foundation of an action at the suit of a transferee. *Savage v. Mathews*, *supra*.

"(4, 5) As employed in section 222 of the Constitution, the term 'bond' signifies an obligation in writing to pay a sum of money. It imports, necessarily, a promise to pay a certain sum of money at a future

date, and commonly bears no specific designation of the person or entity in whose favor its promise runs. Bonds authoritatively issued by agencies of the governments are commercial paper and are capable of assignment and of transfer, and the succeeding owner may of course found an action upon it.—*Blackman v. Lehman*, 63 Ala. 547, 550, 35 Am. Rep. 57. There is, hence, a marked fundamental difference between county warrants and the county bonds to which section 222 of the organic law makes governing reference. The fact that both county warrants and county bonds may be made presentable and payable at a future specified date, and that they bear interest for prescribed periods does not suffice to eliminate the stated characteristic distinctions between them. One, the warrant is an order to pay when in funds; while the other, the bond is a promise to pay."

The statement as to negotiability may be changed by Act No. 633 approved July 30, 1931 (Acts 1931, 772), which states:

"That all public board heretofore authorized or which may be authorized by the Legislature to borrow money be and they are hereby authorized and empowered to issue as evidence of said loans so authorized negotiable semiannual interest bearing coupon certificates of indebtedness."

In the act discussed in *Re Opinions of the Justices*, 163 So. 105, the evidences of indebtedness are described as "county warrants, debentures, certificates or orders, or other like forms of securities."

It is apparent, therefore, that the legislature did not in this act give the term "warrant" a technical significance, such as it may ordinarily have, and I think generally in this connection, it is not given a technical significance.

It is though a definite order to pay a certain amount at a definite time and contemplates that at such time, the money will be available, in the fund out of which payable, sufficient to meet same. The issuance, therefore, of warrants or other orders for the payment of money out of the Gasoline Fund, requires that the governing body make definite provision that moneys will be in such fund sufficient to pay such order when due.

Coming now to your particular inquiries, I advise if I understand the questions one, two, three and four you are primarily concerned with the right of the county to pay interest on the claims outlined in these questions. Assuming this to be correct, it is my conclusion from your letter that they all relate to claims for debts which have been incurred, and as to which, at the time the same were incurred, no agreement or contract was entered into with the several claimants, and duly entered on the minutes of the court, for the payment of interest. Upon such assumption, it is my opinion that each of said inquiries must be answered in the negative.—*Marengo County v. Barley*, 209 Ala. 663, 96 So. 753; *A. G. & A. Ry. Co. v. Gadsden*, 185 Ala. 263, 64 So. 91; *Town of Eutaw v. Coleman*, 189 Ala. 164, 66 So. 646; *Opinions of Attorney General*, Office Edition, Vol. 4, p. 54 (a copy of which is enclosed herewith).

It is my opinion, however, in answer to question one that if the claims were presented within twelve months after they accrued they can be allowed as to principal and paid out of the Gasoline Fund received by the County from the State.

My answer to question two is substantially the same. I am of the opinion that such claim could be approved to be paid at a future date and likewise as to question three if such claim was incurred after March 26, 1936, the Court can approve the same, payable at a future date as provided by Act No. 51 below referred to. In the opinion to Hon. Chas. S. McDowell, County Attorney, Barbour County, supra, it was held that the county could make loans and pledge the gasoline tax and that such would not constitute a part of the constitutional debt limit of the county. Specifically, it was stated:

"* * * I find that I am unable to say, from either the Act levying the tax, or the Act providing the method of distribution and the purpose for which it might be expended, that the Legislature restricted the Courts of County Commissioners or Boards of Revenue in the use of these funds, to an operation on a cash basis."

The Legislature of 1936 apparently recognizing this opinion and that debts had been incurred therefor, specifically authorized by Act No. 51, approved March 26, 1936, Acts 1936, page 28, the Boards of Revenue to expend not to exceed one-third of the total amount that may be received by any county from the gasoline tax in payment of any debt that may have been heretofore incurred by such county for the construction or maintenance of roads and bridges. Therefore, in answer to question five, it is my opinion that you can use not in excess of one-third of the gasoline tax received from the State in payment of these claims which were created prior to March 26, 1936.

From the foregoing I hold

- (1) That a county may borrow money secured only by the gasoline tax, and issue warrants payable at future dates thereof.
- (2) That such warrants may be interest bearing or non interest bearing, dependent on the contract at the time of the incurring of such indebtedness.
- (3) That the county may incur indebtedness payable only out of the gasoline fund and issue warrants in payment therefor payable at future dates.
- (4) That in payment of indebtedness created prior to March 26, 1936, not in excess of one-third of the gasoline tax may be used.

What I have said above does not contemplate and is not intended to authorize the present expenditure and pledging therefor the gasoline tax for an unreasonable period. It seems to me that warrants payable at future dates should be payable within a reasonable time, generally to be gauged by the time required to complete the project, for which the expenditure was made.

Likewise it would appear that reasonable amounts for maintenance of roads and bridges, a necessary current expense, should always be provided for, over and above the long term outlays for construction.

It is needless of course to state that all gasoline money or the proceeds of loans secured thereby must be used for the construction, maintenance and repair of roads and bridges in the county.

I think further that where a claim is allowed by the commissioners' Court, the minutes should show that warrant, payable on a certain date (if not immediately payable) is ordered to be issued.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 7, 1936.

Hon. G. H. Howard,
Judge of Probate,
Elmore County,
Wetumpka, Alabama.

County Financial Control Act—

Act No. 397 H. B. 191, 1935 Acts, page 803, does not include gasoline fund under its budgeting provisions.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of November 19, 1935, in which you request my opinion as follows:

1. In view of Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act", can a county pledge or issue postdated warrants against the proceeds of its share of the gasoline tax levied by the State?

2. In view of Act No. 379, H. B. 191, approved September 9, 1935, known as the "County Financial Control Act," can a county, which collects as much as \$40,000.00 per annum from the road and bridge tax, legally pledge or issue postdated warrants against as much as fifty per cent of the proceeds of its share of the gasoline tax levied by the State, said pledging or issuing of postdated warrants being authorized under the provisions of Act No. 177, S. B. 184, approved July 8, 1935, for such counties?

Your inquiry involves the question of whether the County Financial Control Act in reference to its budgeting provisions applies to the gasoline fund. I am of the opinion that this Act applies only to the general fund as to the budget provisions.

While Section 2 of the Act uses the term "all", this is in the statement of purpose of the Act and the actual provisions in reference to the duty of the Board mention only the general fund. This is part of Section 3 and reads as follows:

"Section 3.—Annual Budgets.—It shall be the duty of the Board of Revenue, County Commissioners or other similar governing body of the Counties, by whatever name they bear, at some meeting in September of each calendar year, or not later than their first meeting in October following, to prepare and adopt an estimate of the income of the county for the fiscal year beginning on October first of the current calendar

year, for what is known as the general fund, under their supervision and control; and to estimate for the same fiscal year the expense of operations, and to appropriate for the various purposes the respective amounts that are to be used for each of such purposes." (Underscoring supplied)

Again in Section 6, the Legislature indicates that the Act applies only to the general fund:

"Section 6.—Disposition of Balances. At the end of every fiscal year any unexpended balances, remaining in the **general funds set up under the provisions of this Act** shall go forward into the general fund of the succeeding year; and such balance or balances shall constitute a part of the income available for such fiscal year, and be handled, appropriated and disbursed as any other income for that year." (Underscoring supplied)

Under the heading "Registration of Old Warrants", Section 10, the Act provides:

"The Board of Revenue, County Commissioners or other like governing body, shall by notice published in some newspaper published in the county, if any, and if not then in some newspaper published in an adjoining county, call in for registration anew all warrants and certificates of indebtedness **payable out of the general fund**, other than bonds, which are past due and remain unpaid at the time this Act becomes effective." (Underscoring supplied).

From the above provisions and from other Sections of the Act, it seems clear that the intent of the Legislature was that the Act should apply only to the general fund as far as its budget provisions are concerned.

When the legislative intent is clear, it must be given effect. As was said by the Special Supreme Court of Alabama in the case of *Abramson v. Hard*, 155 So. 590, at page 593:

"In the interpretation and construction of statutes the primary rule is to ascertain and give effect to the intention of the legislature. As has frequently been stated in effect, the intention of the legislature constitutes the law." 25 R. C. L. p. 960.

"In 25 R. C. L. p. 967, it is said: 'It often happens that the true intention of the lawmaking body, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which, as we have seen, is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed. Hence, the courts have not always confined to the literal meaning of a statute; the real purpose and intent of the legislature will prevail over the literal import of the words. * * *'"

Further, the Act specifically exempts bonds and school funds (Sections 12 and 13). In the interpretation of the **State Budget Act**, in which exceptions were made after the use of the word "all", the Court said:

"It is, of course, a well-settled general rule of construction that where the language of a statute is plain and unambiguous, it should be

given the meaning therein plainly expressed. Relying upon this rule, appellants contend that the use of the inclusive expression 'all appropriations', in section 19 of the aforesaid act, expresses the plain and unambiguous intent on the part of the Legislature to require that all appropriations of every kind and character, other than those therein specifically excepted, shall be prorated in the event the revenues of a given year are not sufficient to pay all. But manifestly this is not true, for other provisions of the same act demonstrate that it was not intended as claimed that 'all appropriations' of every kind shall be so prorated." *Abramson v. Hard*, supra.

I am of the opinion, therefore, both from the actual wording of the Act and from the reasonable interpretation of its provisions, that as to budgets it applies only to the general fund.

In answer to your inquiry in reference to issuing warrants, I enclose copy of opinion addressed to Hon. N. P. Tompkins of this date which discusses this matter.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 20, 1936.

Hon. Henry S. Long, Chairman,
The State Tax Commission,
Capitol.

Motor Vehicles—Under facts stated motor crane held not to require motor truck license imposed by Schedules 158.5 and 158.6.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of recent date in which you enclose letter from Hon. E. C. Whelan, License Inspector of Jefferson County, under date of August 8, 1936, and request my opinion upon the facts set forth therein. Mr. Whelan's letter reads in part as follows:

"We have cited and put under bond this week two trucks which have a crane attached. It is our contention that these trucks are using the highway the same as any other truck, although they haul nothing but the crane. It is the contention of both parties concerned that the trucks are not due a license because they cannot be used for any other purpose and do not use the highways as much as other trucks and they have requested that we get an opinion on same.

* * *

"I am enclosing a letter written to us by the attorney for W. M. Smith & Company. Kindly have an opinion rendered on this at the earliest possible moment."

Mr. Smith's letter, which Mr. Whelan states is enclosed is in part as follows:

"W. M. Smith & Company is engaged in the scrap iron business and as a part of its plant and equipment is a crane attached to an automobile truck. The truck and the crane are one piece of machinery. It is used about the yard and on different jobs. It may remain in one locality several months at a time and then be moved to another. The same is not a truck, neither does it serve the purpose as one. It is moved from job to job as any other piece of machinery and the manner in which it is moved is, I take it, not material.

"It is our contention that it is not a truck but simply a portable piece of machinery and does not require a license. It is a crane and not a truck."

The question now arises as to whether or not, under the facts detailed in the letters above set forth, a motor crane, that is, a crane permanently mounted on a motor driven chassis so as to facilitate its moving from place to place, is subject to the license imposed upon motor trucks by Schedule 158.5 and Schedule 158.6.

In answering your inquiry, I direct your attention to Schedule 158(j), in which the term "motor truck" is defined as follows:

"(j) 'Motor Truck': Any motor-propelled vehicle designed for carrying freight or merchandise or drawing a semi-trailer truck on not more than two axles and not operated or driven on fixed rails or tracks; but it shall not include self-propelled vehicles equipped primarily for passenger transportation."

In my opinion the motor crane, described by the letters set forth above, is not a "motor truck" within the meaning of the foregoing definition so as to require the payment of the license imposed by Schedules 158.5 and 158.6, supra. You will note that the definition specifies that the vehicle must be designed for carrying **freight or merchandise**. "Merchandise" has been defined generally as "objects of commerce; whatever is usually bought or sold in trade, or market, or by merchants; wares; goods; commodities.—**Lautman v. City of New York**, 141 N. Y. Sup. 1042, 1043, 157 App. Div. 219. **Britt v. Cook**, 6 S. W. (2d) 3220 (Tenn.). The commonly accepted definition of "freight," and, in my opinion, that which the Legislature had in mind in the writing of Schedule 158(j), is that found in Webster's international Dictionary (2nd Edition) Unabridged; "That with which anything is laden for transportation, orig. by water now also, esp. in the United States, by land; lading; cargo, esp. of a vessel or of a car on a railroad." Freight is commonly used synonymously with the words "cargo" and "lading."—See **Lewis v. Marshall**, 7 Man. & G. 729, 745; **Pa. R. R. Co. v. Sly**, 65 Pa. 205, 211 **The Nassau**, 177 F. 46, 48.

Thus, we see that the Legislature, in defining a motor truck as any motor propelled vehicle "designed for carrying freight or merchandise," did not intend to include within the terms "freight" and "merchandise" a piece of machinery, such as the crane hereinabove described, which is permanently affixed to said chassis, and it is therefore my opinion that the truck crane need not carry the license referred to above.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 20, 1936.

State Tax Commission,
Income Tax Department,
Capitol.

Income tax deductions: Prior years, losses where partnership operating several businesses owned the capital stock of a corporation and such corporation failed prior to 1933 and losses were sustained thereby, the individual members of the partnership are not authorized to deduct from their gross income of 1933, the loss suffered by the corporation in prior years.

Opinion by Assistant Attorney General Moore.

Dear Sir:

Sometime ago you left a memorandum with this office in which you stated:

"The Jacobs Manufacturing Company of Bridgeport, Alabama, is a partnership composed of individuals whose interests are as follows:

"E. P. Jacobs.....	9/15
Mrs. M. L. Harris.....	2/15
Mrs. Robert Lane.....	2/15
Mrs. Dayton Benham.....	2/15

"It is conceded that the partnership is engaged in various activities, including the operation of a stove foundry, saw mill, store and farms, and that in addition it owns a large number of rental houses and thousands of acres of timber land; also engaged in making loans, cotton transactions and dealings of various and sundry nature.

"The partnership owns all the stock of the Jacobs and Spivey Hosiery Mills, Incorporated. It appears that the corporation is entirely under control of the partnership; that the officers of the partnership control the policies of the corporation, advance loans to carry on operations, when necessary, handle the buying and selling and other details of its operations.

"The corporation sustained heavy losses and was finally closed out in bankruptcy in 1933. The assets were purchased through the bankrupt court by the partnership which continued in control of such assets. As result of the failure of the corporation, the Jacobs and Spivey Hosiery Mills, Incorporated, the partnership claimed a loss of some \$65,000.00 in filing a return of income with the State of Alabama for the year 1933. As result of investigation, it was ascertained that the loss occurred prior to 1933—presumably in 1930, 1931, or 1932.

"Now, the partnership is contending and has filed a brief to this effect, that the loss by the partnership, Jacobs Manufacturing Company, in connection with the failure of the corporation, Jacobs and Spivy Hosiery Mills, Incorporated, is a loss sustained in its regular trade or business and constitutes a proper net loss to be carried forward to the year 1933."

In this memorandum you stated that written opinion was not requested but I understood from your verbal conversation this morning, you now desire that your letter be treated as a written request.

While the facts stated in your letter are slightly different, I am of the opinion that the question is apparently settled by the case of **Dalton v. Bower**, 53 Sup. Ct. Rep. 205, 267 U. S. 404.

In that case, the petitioner Dalton was an inventor and busied himself with physical research and invention and had devised and patented hundreds of articles. During the five years following 1912, he caused the organization of six separate corporations and transferred certain patents to each for exploitation, the last of which was the Dalton Manufacturing Company. He paid for all of the capital stock, \$395,000.00; became director, president, treasurer, and controlled its affairs. No other person was financially interested. He testified that his primary purpose was to handle models and patented articles and sell the corporate shares profitably. He considered the corporation as a branch or part of his own business as an inventor, and dealer in patents, etc.—as a means to an end, an instrumentality of his purpose. In 1924 the corporation became hopelessly insolvent and in 1925 passed out of existence. In his return for 1925 Dalton and his wife claimed a deduction of \$395,000.00, the amount paid for the then worthless shares of the corporation. The District Court allowed his claim, but the Circuit Court of Appeals held otherwise and its decision was upheld by the Supreme Court of the United States. The Court held that the purchase of the stock was an investment and that the evidence showed he treated the corporation as separate and apart from his ordinary affairs, except credits for salaries of an officer, had claimed loss to himself because of loans to the corporation and caused it to make return for taxation distinct from his own. The opinion concluded with this quotation:

“Ownership of all of the stock is not enough to show that creation and management of the corporation was a part of his ordinary business. Certainly, under the general rule for tax purposes, a corporation is an entity distinct from its stockholders, and the circumstances here are not so unusual as to create an exception.”

While the facts are not exactly the same, the analogy is so close that I am of the opinion that the partnership is not entitled to claim loss on its income for 1933, occasioned by the failure of the corporation in 1932, it not being a loss attributable to the operation of a trade or business legally carried on by the taxpayer within the meaning of the statute. Since this decision of the Supreme Court, the following Circuit Court of Appeals' decisions in similar matters are to the same effect. **Ames v. Commissioner**, 68 Federal (2nd) 301, **Anderson v. United States**, 48 Federal (2nd) 201.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 22, 1936.

Hon. Haygood Patterson,
Sheriff, Montgomery County,
Montgomery, Alabama.

Intoxicating liquors—

A still used in the manufacture of vinegar by a process which, at some point therein, makes alcohol but which by a continuation thereof makes vinegar is not violative of law when the same is employed solely for the manufacture of foodstuffs.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"Standard Brands, Inc., a nationally known manufacturer and distributor of food products of whose good faith there can be no question, have purchased a warehouse property in the City and County of Montgomery, and are preparing to manufacture distilled vinegar here.

"I am reliably informed that in the process which they use, molasses is fermented and distilled in an open condenser type of still, which is radically different from any still used for the production of beverage alcohol in that the tube carrying the vapor from the still empties into a vat or tub of plain water and the vapor is condensed by being combined with the water in the vat or tub until the liquid in the vat or tub is raised to the proper strength. This fluid containing all the elements of the vapor as it comes off the still, is then led into a storage tank, and from there into a generator where the bacterial process continues, acetification takes place, and the finished distilled vinegar comes from the generator.

"I am told that this process is not susceptible of corruption to the making of beverage alcohol for the following reasons:

"1. The molasses or mash is treated with an acid before being distilled, which makes impossible the production of alcohol in any bootleg or wildcat still. The product of any such wildcat or bootleg attempt to use the waste would be highly poisonous.

"2. The fusel oil and formaldehyde, which are highly objectionable in beverage alcohol, in this process are not removed from the vapor or from the fluid produced when the vapor is condensed in water. These elements are important in the bacterial process that takes place in the vinegar generator and it is essential to the production of the highest grade distilled vinegar that they be not removed. It results that the fluid produced by this process is distinctly unfit for use as a beverage.

"3. Under the design in use, approved and required by the United States Internal Revenue Department, there is no way by which the vapor can be led through a cooler and condensed spirit alone deposited in a receptacle.

"4. If water is omitted from the tub, or vat, the vapor will vanish in the air without condensation;

"5. If an insufficient amount of water is put in the tub or vat it cannot be circulated to keep cool and the fluid will be raised to the evaporating point at an early stage."

I understand from your request, and from the addenda thereto, that in the manufacture of vinegar, under the process which it is proposed to employ, Standard Brands, Inc., will, at some stage, manufacture alcohol; but that after alcohol is manufactured, the process continues so that it subsequently becomes vinegar.

The statutes governing prohibited liquors and the possession or operation of a still for the manufacture thereof, are intended to apply to such of the products of the still as are to be used for beverage purposes. It is a matter of common knowledge that in the manufacture of numerous foods and foodstuffs, at some point in the process of manufacture alcohol is formed. However, such manufacturing processes, for such purposes, are not illegal under the statutes of Alabama.

If the Standard Brands, Inc., enters into the manufacture of vinegars in the State of Alabama, and the process which it employs at some point therein, results in alcohol which is not to be used for beverage purposes, but which by a continuation of the process is to be converted into vinegar or other food products, there will be no violation of the laws of Alabama. See *Jones v. State*, 23 Ala. App. 30.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 23, 1936.

Hon. Fred H. Price,
Clerk of the Circuit Court,
Autauga County,
Prattville, Alabama.

Fines and Forfeitures—

Fines and Forfeitures payable in scrip in Autauga County.

Opinion by Assistant Attorney General Small.

Dear Sir:

Under date of July 28, 1936, you request my opinion as follows:

"There was passed at Regular Session, 1919 and found at page 228 Local Acts, 1919 an Act to regulate and provide for the payment of claims against the Fine and Forfeiture Fund of Autauga County, Ala. Said Act provides that witness certificates and officer's scrip will be received in payment of fines imposed, or for the payment or liquidation of any forfeiture or judgment entered up in the Courts of said county.

"In an opinion found at page 37, Quarterly Report of the Atty. General, Volume No. 1, it is held that fines must be payable in money. You are therefore respectfully requested to immediately render an opinion relative to the Local Act above referred to, stating if Section 4038

of the Code of 1923 had the effect of repealing said Local Acts. Would the wording 'unless otherwise expressly provided' as contained in Section 4038 hold said local act binding?

"Would there be any retroactive effect which would cause Circuit Clerk or any officer of Autauga County to be liable under their official bond for accepting such Scrip in payment of Fines and Forfeitures in the event your answer is in the affirmative?"

In reply, I wish to advise that in my opinion Section 4038 of the Code of 1923 did not have the effect of repealing Local Act found on page 228 of the Local Acts of 1919, governing the payment of Fines and Forfeitures in witness certificates and officers scrip.

The Act here referred to, Local Acts 1919, page 228, applies to Autauga County only, and was never intended to control such transactions beyond the limits of more than one county.

I wish to refer you to Section 11 of the Code of 1923, which provides in part as follows:

"This code shall not affect * * * local, private, or special statutes, and those public laws not of a general and permanent nature, and those which now relate to or can apply to but one county, one municipality or one particular district, circuit or territory * * * are not repealed by this code."

I wish to further refer you to the case of Reid vs. Wallace, 168 So. 900 (Advance Sheet July 16, 1936).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 23, 1936.

Mrs. Marie Bankhead Owen,
Director, Department of Archives & History of Alabama,
Capitol.

Confederate Pension Miscellaneous Fund may be expended for record filing cabinets upon approval of majority of Pension Commission.

Opinion by Assistant Attorney General Loeb.

Dear Madam:

I have your letter of October 8, 1936, in which you request my opinion as follows:

"I have been informed by Judge Charles E. McCall, the State Auditor, that there is \$300.00 in the miscellaneous Confederate Pension Fund that he is willing to expend for steel file cases to hold Confederate pension records.

"If this money can be legally expended for that purpose, please advise me as the law places the care of all State archives in the hands of

the Department of Archives and History. We are sorely pressed for filing equipment and if this money can be legally expended in this way, it will be a great relief to me."

Your attention is respectfully directed to the General Acts of 1935, page 799, wherein we find the following appropriation to the Pension Commission: "Miscellaneous \$300.00". It is my opinion that this \$300.00 may be used for the purpose of procuring file cases to hold the Confederate pension records. I can think of no expenditure which would be more in keeping with the miscellaneous duties of the Pension Commission than in maintaining complete permanent records of the Confederate pensions and pensioners, both as a matter of practical necessity and historical expediency. The adjective "miscellaneous" is generally used to indicate the appropriation for the minor disbursements incidental to any great business, which cannot well be foreseen and which would be useless to specify more accurately for such disbursements. A round sum is usually appropriated under the head of "miscellaneous expenses". *Dunwoody v. United States*, 22 Ct. Cl. 269, 280.

I further call your attention to Section 2933 of the Code of Alabama of 1923 which imposes the duties of the Alabama Pension Commission on the Director of Archives and History, the Attorney General and the Chief Examiner of Public Accounts ex officio and gives to these persons full control and supervision of all pensions allowed, and gives them the further authority to do and perform any and all acts whatsoever as are necessary to the full execution of the article dealing with pensions for Confederate soldiers and sailors. In view of this section, it is my opinion that the \$300.00 remaining in the miscellaneous fund of the Pension Commission may be expended for the needed filing cabinets upon the approval of the majority of the Pension Commission composed of the Director of Archives and History, the Attorney General and the Chief Examiner of Public Accounts.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 23, 1936.

Hon. E. S. Tunstall,
Tax Assessor, Baldwin County,
Bay Minette, Alabama.

Board of Review has right to review information assessments made by the Tax Assessor but has no authority to review escape assessments.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 23, 1936, in which you state:

"Please advise me whether or not the Board of Review has a legal right under the 1935 Revenue Act to reduce a valuation on an assessment copied or assessment made as an information assessment, that is, where the taxpayer fails to assess and the assessor picks the assessment up as a copied or information assessment.

"The question is whether the taxpayer fails to make the assessment and after the same was picked up as an information assessment could he avail himself of the right to appear before the Board of Review as the right given him in case he assessed and swore to the assessment. Of course I understand he could not be entitled to appear before the Board in any event unless the protest was filed legally."

In reply, I beg to advise that Section 67 of the 1935 Revenue Act provides in part that the Board of Review shall "inspect, review, revise and fix the value of all the property returned to or listed with the Tax Assessor for taxation for each year". And Section 50 provides for the delivery by the Tax Assessor to the Board of Review not later than the second Monday in March of his completed assessments.

It is, therefore, my opinion that the Board of Review has a right to review **information** assessments made by the Tax Assessor and to review the same as fully where proper protests are made as in cases where returns are made by the taxpayers.

However, the foregoing does not apply to "escape" assessments. The review of "escape" assessments is to be made by the Assessor himself and from his action there is an appeal to the Circuit Court as is provided in detail by Section 45 of the Revenue Act of 1935.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

NOTE: THIS OPINION OVERRULED BY OPINION
FEB. 3, 1937 TO EUGENE H. HAWKINS

October 23, 1936.

Hon. Eugene H. Hawkins,
Judge of Probate,
Jefferson County,
Birmingham, Alabama.

Deed Tax. Deed from Trustees appointed in Federal Court in proceedings for corporate reorganization to corporation, under Court order held subject to deed tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter enclosing a deed from Fred L. Dickey and Clifford Histed, Trustees to W. S. Dickey Clay Manufacturing Co. You also enclose order of United States District Court, Western Division of Missouri confirming plan of reorganization and final decree discharging trustees and closing case, and ask if such require the deed filing tax.

As I read the file, under the order of the Court all the property which passed to the receivers and trustees was conveyed by them to the W. S. Dickey Clay Manufacturing Co. pursuant to the orders of the Court.

It appears that as title vested in the Trustees it was divested by the instrument and hence a deed tax is payable based on value of property in Alabama conveyed by such instrument.

I return the three instruments.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 23, 1936.

Hon. Ed B. James,
Marion, Alabama.

Officers—Under facts stated the term of office for the County Superintendent of Education for Perry County will begin on the date of the legal ascertainment of the result of the election.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of September 5, 1936, in which you state:

On April 5, 1929, Mr. W. R. Carothers was appointed to the office of County Superintendent of Education for Perry County by the Perry County Board of Education, for a term of four years from July 1, 1929. Under a Local Act, passed by the Special Session of the Legislature of 1931, Mr. Carothers was elected to the office of County Superintendent of Education for Perry County for a term of four years. On May 5, 1936, Mr. Carothers was defeated in the primary and I was the successful nominee for County Superintendent of Education for Perry County.

Being the nominee, I am requesting your office to give me an opinion as to the time or date I will take over the duties of County Superintendent of Education?

In my opinion your term of office will begin on the second Tuesday in November, 1936, the date of the legal ascertainment of the result of the election.

As no specific time is designated for the beginning of the term of office under the Local Act, the term of office dates from the legal ascertainment of the result of the election.—**Biennial Report of Attorney General, 1932-1934**, p. 597; *State ex rel. Foster v. Rice*, 230 Ala. 608, 162 So. 292; *Prowell v. State ex rel. Hasty*, 142 Ala. 80, 39 So. 164; *State ex rel. Covington v. Thompson*, 142 Ala. 98, 38 So. 679.

It is my opinion that Mr. Carothers' tenure of office under the elective term began on July 1, 1933, and will end on the date of the legal ascertainment of the election. The elective term did not begin until after the expiration of the appointive term—*Springer v. State ex rel. Williams*, 229 Ala. 339, 157 So. 219.

In the case of **State ex rel. Foster v. Rice**, 230 Ala. 608, 162 So. p. 293, the Supreme Court of Alabama said:

"The term of an office, as fixed in the Constitution or statute creating the office, is not to be confused with the tenure of an officer, and is **not** affected by the holding over of an incumbent beyond the expiration of the term for which he was appointed."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 23, 1936.

Hon. Fred McDuff, Sheriff,
Jefferson County,
Birmingham, Alabama.

FIREARMS ACT. Commissioner of Licenses of Jefferson County held to have same right to issue permits as have Probate Judges in other Counties.

Issuing authority may grant permit to carry pistol in vehicle and deny the right to such person to carry a pistol concealed about his person.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your two letters of October 8th.

As I understand the request contained in your first letter you wish to know if the Commissioner of Licenses of Jefferson County may issue the permits authorized to be issued by Sections 7 and 11 of the Uniform Firearms Act of 1936 (Acts 1936, p. 51) instead of the Probate Judge.

Section 6 of the License Commissioner Act (Acts 1931, p. 523, provides:

"Section 6. That it shall be the duty of the Commissioner of Licenses in their respective counties to collect and issue all licenses for exercising any right or privileges for which a license is required, marriage licenses, hunting licenses, chauffeur licenses, licenses for motor vehicles and any or all other licenses which are now or which may hereafter be required by law to be paid to the State of Alabama, and/or the counties thereof."

While the so called license provided by the Uniform Firearms Act is more in the nature of a permit under the police power of the State, yet I am of the opinion under the broad language of Section 6 of the 1931 Act, the Commissioner of Licenses in Jefferson County is authorized to perform the duties under the Firearms Act which the Probate Judges in other Counties are authorized to perform.

Quarterly Report, Volume 1, p. 94

Opinion to Eugene B. Henry, Commissioner of Licenses, dated January 12, 1933.

In your second letter you state:

"In connection with my communication of this date in reference to pistol licenses in Jefferson County et cetera, I wish you would also include in your opinion an answer to the following:

"1. May a single license be issued authorizing the licensee to carry a revolver or pistol concealed on his person and carry a revolver or pistol in a vehicle.

"2. If so, should a single fee of 50c be charged or a double fee of \$1.00?

"3. May a license be issued authorizing the recipient to carry a revolver or pistol in a vehicle, but not to carry the same concealed on his person?"

Answering these questions in numerical order, I advise:

1. Section 7 of the Firearms Act provides:

"ISSUING OF LICENSES TO CARRY: The Probate Judge, the Chief of Police of a municipality, the Sheriff of a County, may upon the application of any person issue a license to such person to carry a pistol in a vehicle or concealed on or about his person within this State for not more than one year from date of issue, if it appears that the applicant has good reason to fear injury to his person or property, or has any other proper reason for carrying a pistol, and that he is a suitable person to be so licensed. The license shall be in triplicate, in form to be prescribed by the Secretary of State, and shall bear the name, address, description and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent by registered mail to the Secretary of State and the triplicate shall be preserved for six years, by the authority issuing said license. The fee for issuing such license shall be 50c (fifty cents) which fee shall be paid into the State Treasury."

It is my opinion that the law contemplates the payment of a fifty cents fee for each permit issued, and the issuing authority may under the Act issue the permit to a person to carry a pistol on his person and in a vehicle. This presumably applies to a particular pistol and one permit is not intended to authorize the holder to have one pistol on his person and another in a vehicle.

2. A single fee is all that is contemplated for one pistol. If the party desires a permit to carry one pistol on his person, and another in his vehicle, then an additional fee is payable.

3. In my judgment a permit may be issued authorizing a person to carry a pistol only in his vehicle, only on his person, or both.

The language of the Statute appears to me to be so divisible in itself.

However, the issuing authorities act in a nature judicially and may deny the permit entirely. If this be true, it follows that the privilege grant-

ed may be limited. The lesser is included in the greater, and part in the whole.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 24, 1936.

Hon. Eugene B. Henry,
Commissioner of Licenses,
Jefferson County,
Birmingham, Alabama.

Motor Vehicles—Licenses

1. Amount of proof that motor vehicle has not been operated addresses itself to the license issuing authority.
2. Under facts party held not liable for penalty for delinquency.
3. Before a new motor vehicle can be operated upon the public roads of the State proper license should be procured.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"There has been considerable confusion in collecting 15% penalty on automobile licenses as it is different from last year. I will try and ask the questions as they are asked me by the public:

"1. If A owns an automobile on Sept. 30th and applies for license tag on Nov. 15 and makes a sworn statement that said car had not been operated on the highways of the State of Alabama between Sept. 30th and Nov. 15th should I collect 15% penalty where we have no notice from the License Inspector of his delinquency or a copy of a citation.

"2. If A owns an automobile and drives it to a Dealer on October 2nd and sells same to the dealer and he in turn resells this same car to another owner on Nov. 15th and the last mentioned owner applies for a license on Nov. 15th is he liable for the penalty for the car being operated on October 2nd or could he make affidavit that the car had not been operated on the highways while in his possession without proper license and avoid paying the penalty.

"3. If 'A' buys a new automobile from authorized dealer and the car is delivered to 'A' without dealer's tag and 'A' drives automobile to the Court House to purchase license is he delinquent for driving automobile without license?

"Trusting you will give me an early ruling on the above questions, I am"

In answer to question 1, I advise that if the motor vehicle has not actually been operated on the public roads between September 30th and

November 15th, it is not delinquent. Proof of such fact satisfactory to the Probate Judge or Commissioner of Licenses must be made. The degree and manner of proof is for the issuing officer to determine. I cannot abstractly advise you what proof is necessary in any individual case.

In answer to question 2, I advise that in my opinion the penalty for delinquency would not attach to the **last owner** under the facts set out by you, if he has not actually operated the same himself.

In answer to your last question, I call to your attention subsection b.b. of Schedule 158.1, providing as follows:

"(b. b) Provided, however, that the license tags for such automobile or motorcycle shall remain with such automobile or motorcycle for the remainder of the current tax year, and that before any private automobile or any motorcycle shall be used on any public highway the proper license tag therefor must be procured and securely attached to the rear end of the automobile or motorcycle, said tag to be securely attached right side up with the number thereof in an upright position and the numbers thereof plainly visible."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 24, 1936.

Hon. Chas. W. Lee,
State Controller,
Capitol.

Gasoline tax fund—

Lawrence County, under Act No. 336, approved Septemebr 6, 1935, page 204, and Act No. 361 approved September 7, 1935, Local Acts 1935, page 215, may issue refunding warrants payable out of the 25% of the proceeds of the gasoline tax fund, to be set aside by Act No. 336, supra beginning October 1, 1936, for the purpose of retiring outstanding road debts, to replace interest bearing warrants which were issued against the General Fund in payment of construction and maintenance of roads and bridges in Lawrence County prior to October 1, 1935, and which were due and unpaid as of that date.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 14, 1936, which follows:

"Please refer to an opinion of your office rendered to Hon. Chas. E. Bragg, Probate Judge Lawrence County, on September 26, 1936, and advise if said opinion is applicable to interest bearing warrants issued against the General Fund in payment of construction and maintenance of Roads and Bridges in Lawrence County. Said Warrants were due and unpaid as of October 1, 1935. These warrants should have been issued against the Gasoline Fund in the first instance."

In reply, I wish to advise that it is my opinion that Lawrence County may, under Act No. 336, approved September 6, 1935, Local Acts 1935, page 204, and Act No. 361, approved September 7, 1935, Local Acts 1935, page 215, issue refunding warrants payable out of the 25% of the proceeds of the gasoline tax fund to be set aside by Act No. 336, supra, beginning October 1, 1936, for the purpose of retiring outstanding road debts, to replace old warrants issued against the General Fund in payment of construction and maintenance of roads and bridges which were issued prior to October 1, 1935, and were due and unpaid as of that date.

The opinion of this office to which you refer in your letter, which was rendered to Hon. Chas. E. Bragg, Probate Judge, Lawrence County, on September 26, 1936, held as follows:

"Lawrence County, under Act No. 336, approved September 6, 1935, Local Acts 1935, page 204, and Act No. 361, approved September 7, 1935, Local Acts 1935, page 215, may issue refunding warrant payable out of the 25 per cent of the proceeds of the gasoline tax fund to be set aside by Act No. 336, supra, beginning October 1, 1936, for the purpose of retiring outstanding road debts, in an amount equal to the indebtedness represented by the old warrant, which includes both principal and accrued interest, if the old warrant was properly drawn against the gasoline tax fund when originally issued; and said refunding warrant may bear interest at a rate not exceeding 6 per cent, also to be paid out of said 25 per cent of the proceeds of the gasoline tax fund to be so set aside."

While that opinion only held that such refunding warrants, payable out of this 25 per cent of the proceeds of the gasoline tax fund to be set aside by Act No. 336, supra, beginning October 1, 1936, for the purpose of retiring outstanding road debts, could be issued to replace indebtedness represented by old warrants, if the old warrants were properly drawn against the gasoline tax fund when originally issued, it was strictly limited to the question there before us. It cannot be construed as holding that such refunding warrants payable out of this fund can only be issued to replace old warrants which were drawn against the gasoline tax fund in the first instance. Rather the contrary is true. Refunding warrants payable out of this 25 per cent of the proceeds of the gasoline tax fund to be set aside for the purpose of retiring outstanding road debts can be issued to replace all warrants outstanding against any fund of Lawrence County, if these warrants were originally issued for the construction and/or maintenance of roads and bridges regardless of what fund they were charged against.

Section 1 of Act No. 336, supra, which is the act providing for this 25 per cent to be so set aside for this purpose provides that it shall be used for the retirement of all county road indebtedness including bonds of said county issued for the purpose of building public roads in said county. You will note that this provision of the Act does not refer to the fund or funds of the county against which the old indebtedness was charged, but rather, that it relates to the purpose for which the old indebtedness was created. If that purpose was for the construction and maintenance of roads and bridges, then the proceeds of the 25 per cent of the gasoline tax fund to be set aside for the retirement of such debts, can be used for this purpose, and no reference is made to the fund against which the old indebtedness is charged.

Therefore, I advise you that Lawrence County may issue its refunding warrants payable out of the 25 per cent of the proceeds of the gasoline tax fund which is set aside by Act No. 336, supra, beginning October 1, 1936, for the purpose of retiring the outstanding road indebtedness of the county, to replace old warrants issued against the General Fund, which were originally issued in payment of construction and maintenance of roads and bridges in Lawrence County.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 26, 1936.

Hon. J. H. Williams,
Superintendent of Banks,
Capitol.

Building and Loan Associations:

Where Building & Loan Association which has made ratable distributions to its shareholders as authorized by the Act of 1932, page 157 has since such distribution accumulated cash reserves ample and sufficient to re-engage in the business of lending money without impairing its solvency, such association has the power to make such loans notwithstanding there are certain notices of withdrawals on file.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 26th, in which you state:

"There is a Building and Loan under our supervision, which during the early 30's found its condition would not permit the payment of withdrawals as rapidly as demands were made. This condition was due to the fact that collections on mortgage loans had very materially decreased, together with a substantial increase in Notices of Intention to Withdraw on the part of their Shareholders.

"During the year 1934 and 1935 the Association, by proper action of its Board of Directors, with the approval of the Building and Loan Commissioners, made ratable distributions to their Shareholders, as authorized by an Act of the Legislature, approved October 22, 1932. (S. 195 Edmonds, page 157, G. A. of Alabama, extra session 1932). Since that time large cash Reserves have accumulated in the Association from the collection of Mortgage Loans and by the sale of Real Estate Owned.

"It now appears desirable to make some new loans as authorized by Section 33 of the Building and Loan Act, (page 232 and 233 of the G. A. of Alabama, regular session, 1931) using a portion of the accumulated Cash Reserve. There is no question as to the Association's solvency.

"Will you kindly give me your opinion as to whether or not an Association of the above status could legally and properly make new loans while notices of withdrawals are on file?"

In reply, I beg to advise that the matter apparently is one of sound business principles rather than one purely of law. I note that you say that since ratable distributions were made to shareholders as authorized by the Act of 1932, page 157, the Association has accumulated large cash reserves and that there is at present no question as to the Association's solvency and I interpret your letter to mean that the accumulated cash reserve is sufficient to amply authorize the making of loans. If this be true, the fact that there are notices of withdrawal now on file would not prevent the Association from making loans. I presume that with any normal Association actively engaged in business there are practically at all times some notices of withdrawals pending.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 26, 1936.

Hon. B. H. Baker,
Clerk, Circuit Court,
Barbour County,
Clayton, Alabama.

The Act of the Legislature approved March 26, 1936, is effective in cases appealed from the County Court to the Circuit Court on the conviction of the defendant in the Circuit Court and not on the date of the affirmance of the case in the Court of Appeals.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 23, 1936, in which you request my opinion as follows:

"A person who was convicted of a misdemeanor in the County Court of this County appealed his case to the Circuit Court of this County where he was again convicted. The date of conviction in the Circuit Court was prior to the passage of the Act relieving a party of the payment of a solicitor's fee in the Circuit Court in addition to the one imposed in the County Court, but the party appealed from the Circuit Court to Court of Appeals of Alabama where the case was affirmed but after the passage of the Act described above.

"In this particular case, the conviction in both County and Circuit Courts were had before passage of Act, but affirmance by Court of Appeals was had after passage of the Act, does this party have to pay the solicitor's fee in both County and Circuit Court or only the one in the County Court."

In answering your request, I call your attention to an Act of the Legislature approved March 26, 1936, (General Acts 1936, p. 30) which is as follows:

"Section 1. That Section 3759 of the Code of Alabama of 1923, be amended so as to read as follows: Section 3759. For every conviction

for a misdemeanor in the County Courts or Inferior Courts there shall be taxed and collected as a part of the costs and paid into the County Treasury the same Solicitor's fees provided for conviction in such cases in the Circuit Court, provided that in the event of an appeal to the Circuit Court no Solicitor's fees shall be taxed or collected for the services of a Solicitor in the Circuit Court."

In connection with this matter, I also call your attention to Section 5512, Code of Alabama, 1928, (Michie), which is as follows:

"5512. SOLICITORS' FEES IN COUNTY COURTS: HOW TAXED AND COLLECTED.—For every conviction of a misdemeanor in the county courts or inferior courts there shall be taxed and collected as a part of the costs and paid into the county treasury the same solicitors' fees provided for conviction in such cases in the circuit court; and said fees shall be placed in the solicitor's fund of such county by the treasurer of said county; and on appeal to the circuit court, the same shall be taxed as a part of the costs in addition to the solicitors' fee taxed for such conviction in the circuit court, and this solicitors' fee previously taxed in the county court or inferior court, shall be paid, when collected, into the county treasury, and placed in the solicitors' fund of such county by the treasurer of said county."

The Act of 1936, *supra*, changed the law as to fees of county solicitor earned in the County Court as regulated by Section 5512 of the Code, *supra*. The Act of 1936 provides that where there is an appeal from a conviction in the County Court to the Circuit Court, and the conviction is had in the Circuit Court no solicitor's fee for the Circuit Court can be charged, changing materially the provisions of Section 5512, but there is no repealing clause in said Act. Now the question presents itself: Does the 1936 Act, *supra*, repeal Section 5512 of the Code as to this provision? We think it does for the reason it is a later enactment, and, therefore, it repeals by implication that part of Section 5512 which refers to the collection of a Circuit Solicitor's fee in the Circuit Court.

Now we come to the real question in your request, that is, when does the Act of 1936 become operative in cases in the Circuit Court which were appealed from the County Court on conviction had before the passage and approval of the Act of 1936, *supra*, and which were appealed to the Court of Appeals and affirmed after the approval of the Act. It is my opinion the Act of 1936, above quoted, did not affect the case you detail above, as the conviction was had before the approval of the Act. I do not think the date when the case was affirmed in the Court of Appeals makes any difference. The date of the conviction must govern. In other words, the Act cannot be construed to be retroactive.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 27, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

1. County Board of Education—may pay reasonable traveling expenses of supervisor, authorized to furnish supervisor or attendance officer with automobile as a part of salary contract, and to pay traveling expenses of attendance officer.

2. Schools—Erection, Equipment and Repair Fund should be used for purchase of equipment for school building if sufficient therefor.

Opinion by Assistant Attorney General Small.

Dear Sir:

Receipt is acknowledged of your request for opinion of recent date, as follows:

"(1) Is there legal authority for the County Superintendent of Education to furnish supervisor and attendance officers with automobiles and the upkeep of same and if so, from what fund?

"(2) When Erection, Repair, and Equipment accounts show balances, is it legal for school equipment to be bought from the General School Fund?"

In reply, I wish to advise that this office in an opinion addressed to you under the date of August 19, 1935, written by the Attorney General in substance held that County Boards of Education have authority under general law to fix in their discretion the contract of employment of the County Superintendent of Education, and such Boards also have authority to provide expense accounts.

In my judgment, if the County Board of Education can exercise this authority in fixing the contracts of employment for Superintendents of Education, under the general law the same principle is applicable to the instant situation.

Section 169 of the School Code provides:

"The County Board of Education may in its discretion provide upon the nomination of the County Superintendent of Education, at least the following assistants: an elementary school supervisor and a statistical and stenographic clerk. No person shall be eligible for appointment as such supervisor who does not hold a certificate of administration and supervision as required of County Superintendents of Education. The County Board of Education may employ additional clerical and professional assistants, including health supervisors and may reimburse them for all actual traveling expenses necessary in the performance of their official duties. The County Superintendent is hereby required to maintain an office at the County seat. The County Board of Revenue or Court of County Commissioners shall provide the County Superintendent of Education and his professional and clerical assistants with ample, convenient and comfortable office quarters. The County Board of Revenue or Court of County Commissioners shall also provide necessary

furniture, office equipment, stationery, postage, forms, and supplies required by the County Superintendent of Education and his assistants."

This Section authorizes the employment of the School Supervisor and attendance officer and provides for the payment of traveling expenses, which in my judgment must be paid from the fund from which the salary is paid. Section 318 of the School Code provides:

"The attendance officers who are employed by the County or City Board of Education shall be paid by the respective boards of education such salaries as may be required to secure efficient service. Said attendance officer shall be paid as other employees of the County or City Boards of Education are paid, but no attendance officer shall receive any compensation under the provisions of this Code until he shall have filed such reports as are required by the State Board of Education, and by the Board of Education of the County or City employing him."

Under the terms of this section, in my judgment, the compensation contract is a matter that addresses itself to the discretion of the County Board of Education, limited only by the term "such salaries as may be required to secure efficient service."

In my judgment, if the County Board of Education should deem it advisable and for the best interests of the County to include as a part of such salary contract a car for the performance of the services of the School Supervisor or attendance officer then the same could be provided as a part of the salary payable and as consideration for the services to be rendered under the contract of employment.

Under the above circumstances, of course, the car would constitute a part of the salary contract and should be paid for from the same fund as the salary is paid. It must be clearly understood, however, that the salary contract is entirely separate and distinct from the traveling expense allowance here considered.

Answering your second inquiry, it is my opinion that equipment should be purchased, in so far as practicable, from the Erection, Repair and Equipment Fund, provided by Section 370, et seq of the School Code of 1927.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 27, 1936.

Hon. E. J. Harris,
Tax Assessor,
Lawrence County,
Moulton, Alabama.

Land assessed to the Resettlement Administration not taxable.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of September 25, 1936, in which you request my opinion as follows:

"Please advise me whether or not land assessed to the Resettlement Administration is taxable or not."

In my opinion, land assessed to the Resettlement Administration cannot be taxable. Investigation reveals that the Resettlement Administration is a Federal agency organized by Presidential Proclamation issued under authority of the Emergency Relief Appropriation Act of 1935 (Public Resolution No. 11). As such, therefore, it would come under the well recognized rule, originally announced in the epic case of *McCullough v. Maryland*, 4 Wheat. (U. S.) 316, that a State may not tax an instrumentality of the Federal Government.

It is, therefore, my opinion that the land assessed to the Resettlement Administration is not taxable.

The foregoing conclusions are, of course, based on the premises that the lands in question were **lawfully** acquired by the Resettlement Administration under constitutional authority.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 27, 1936.

Hon. B. F. Burch, Tax Collector,
Russell County,
Phenix City, Alabama.

TAXATION—ESCAPE ASSESSMENTS: Where an escape assessment is made final, taxes thereon become due immediately, and interest is collectible from the date such escape assessment becomes final.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 30th, in which you state:

"On the 1936 Tax Abstract, there are a number of Escapes along with the other regular assessments and I am writing you to find out whether or not I must charge interest on these Escapes from October 1st, 1936, or wait until January 1st, 1937, to charge interest. There seems to be a good many Escapes of this nature and I am very anxious to find out whether to charge interest before January 1st, 1937, and I will appreciate an early reply from you."

In reply, beg to advise that escape assessments occupy a peculiar place with reference to the time when taxes become due. As the property has escaped taxation for the years for which it was due, as soon as the Assessor discovers such property and makes the assessment and makes the same final, the taxes become due thereon, and it is the duty of the Assessor to certify the same to the Collector and the Collector to immediately proceed to make collection thereof.

I call your attention to the latter part of Section 45 of the 1935 Revenue Act, which provides:

"Whenever any escape assessment is made final the taxes shall immediately become due and the Assessor or Deputy Assessor shall forthwith certify the assessment to the Collector, who shall forthwith collect the same."

Therefore, unless an appeal was taken in the manner there provided, the taxes became due immediately upon the assessment becoming final, and it is your duty to collect interest from the date the assessment became final.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 27, 1936.

Hon. R. H. McAnelly,
Judge of Probate,
Jackson County,
Scottsboro, Alabama.

Counties—May refund warrants issued prior to October 1, 1935, although the due dates of same are after October 1, 1935, under the provisions of Act No. 379, H. 191, approved September 9, 1935, (Acts 1935, p. 803) known as the County Financial Control Act.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 22, 1936, which is as follows:

"There are several obligations of this county which are past due, and claims of various kinds which have been renewed and are coming due soon, and which the General Funds of the county will not be sufficient to allow them to be included in the budget for next year. On account of the maturity date of several of the largest obligations, seems the 'County Financial Control Act' might prohibit the refinancing of an amount sufficient to relieve the 1937 Budget of an over burden. I'm giving you below a list of warrants and accounts which we would like to re-finance and which it seems very necessary that the County refinance at least \$20,000.00 or if possible \$25,000.00. Please look over the items and dates and give me your opinion as to what claims we might include in a 'Refinancing' program.

Dates	Warrant	Account	Date due
1/14/1935	\$13,000.00		1/ 5/1936
1/14/1935	1,711.00		2/ 1/1937
1/14/1935	1896		2/ 5/1936
9/23/1935	425.00		2/ 1/1936
1/23/1936	2,886.00		1/ 8/1937
1/23/1936	6,000.00		1/22/1937
		\$342.00	1934
		670.00	10/1/1935 Due Madison

Co. \$262.00 of a \$446.00 account was contracted before Oct. 1st, 1935.

"Your ruling and advice as to which of the claims recited above may be included in the refinancing to be done in this County, will be very much appreciated."

In answer to your inquiry, I am of the opinion warrants validly issued against the general fund that were issued prior to October 1, 1935, although the due date is after October 1, 1935, may be refunded under the provisions of Act No. 379, H. 191, approved September 9, 1935 (Acts 1935, p. 803) known as the County Financial Control Act. Those warrants issued for debts incurred after October 1, 1935, are not subject to refund.

Section 9 of the Act above cited provides in part as follows.

"Section 9.—SHALL REFUND OUTSTANDING WARRANTS. It shall be the duty of all Boards of Revenue, County Commissioners and other like governing bodies of the counties to refund all warrants, which are unpaid and past due at the time this Act goes into effect, and for which there is no money available at that time. * * *"

In construing this section relative to temporary loans made prior to October 1, 1935, but due after October 1, 1935, this office held that same could be refunded.—**Opinion of Attorney General to State Comptroller, August 7, 1936.** Reasoning by analogy, the same principle would apply to general fund warrants legally issued prior to October 1, 1935, for outstanding debts although not due until after October 1, 1935. Therefore, such warrants may be refunded under the provisions of the County Financial Control Act, *supra*.

Those warrants issued for debts incurred after October 1, 1935 may not be refunded. In this connection I wish to refer you to an opinion of this office rendered to the Chairman of the Board of Revenue of Walker County on July 7, 1936, a copy of which is herewith enclosed, and to Quarterly Report of Attorney General, Vol. II, p. 138.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 27, 1936.

Hon. W. H. Quillin,
Judge, Law and Equity Court,
Franklin County,
Russellville, Alabama.

Fine and Forfeiture Fund—

Fine imposed upon party arrested for public drunkenness should be paid into Fine and Forfeiture Fund even though party arrested by Highway Patrolman.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of September 7, 1936, in which you request my opinion as follows:

"A highway patrolman arrested a person on the public highways of Franklin County while driving an automobile while under the influence of intoxicating liquor. The officer arresting said person commenced a criminal prosecution against him by making an affidavit before the Clerk of the Law & Equity Court and a warrant of arrest was issued on said affidavit. The affidavit or complaint charged this person with driving an automobile while under the influence of intoxicating liquor.

"When this case was called for trial the Solicitor who prosecutes for the state, with the consent of the defendant, amended the affidavit by adding count two charging the defendant with public drunkenness. The defendant pleaded guilty to count two of the affidavit charging public drunkenness and the court fixed his fine at \$25.00 for public drunkenness.

"Does the \$25.00 fine go to the fine and forfeiture fund of the county or does the \$25.00 fine go to the funds of the State Highway Department? Please advise me just where the \$25.00 fine goes to?"

In my opinion, the \$25.00 fine which you mention in your letter should be remitted to the Fine and Forfeiture Fund of the county and not to the State Highway Department. Section 80 of the act creating the Highway Patrol and the Highway Patrol Fund (General Acts 1935, pages 756, 759) provides that:

"Fines and Forfeitures imposed upon persons violating the provisions of this act shall be rendered into the said Highway Patrol Fund by the officers of the several courts."

The offense of "Public Drunkenness" is not mentioned in the Highway Patrol Act, supra, nor is it to be found in the Rules of the Road, promulgated by the State Highway Department of Alabama under authority of the Alabama Highway Code (Act No. 58 of General Acts of Alabama 1932). It appears then that the fine in question was not imposed for a violation of the provisions of the Highway Patrol Act, and I, therefore, advise you that the \$25.00 should be paid into the Fine and Forfeiture Fund of the county.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

October 28, 1936.

Hon. J. G. Pinson,
County Superintendent of Education,
Coosa County,
Rockford, Alabama.

School Depository—Under facts stated Alexander City Bank may be paid out of the Minimum Program Fund for clerical assistance in handling school funds.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of September 30, 1936, in which you state:

"1. L. M. Willis, Vice-President of the Alexander City Bank, was duly appointed and bonded as Treasurer of School Funds—later under the new law, as Custodian of School Funds—for the Coosa County Board of Education. He was appointed to serve until September 30, 1936. The minutes of the County Board of Education for the meeting at which he was appointed, carry a resolution adopted by the Board, providing that the Alexander City Bank should be Depository, and should be placed on the payroll in the amount of \$37.50 per quarter for clerical assistance; the same to be paid from the Bonus Fund.

"2. The Bonus Fund ceased to exist as a separate fund when the Minimum Program went into effect, October 1, 1935. I wish to know if it is legal for the County Board of Education to pay the Depository Bank for said clerical assistance according to the contract mentioned above for the year, 1935-36, out of funds now held by the Custodian of School Funds as a surplus from the proceeds on State Warrants issued to the County Board of Education by the State in 1933, since the Certificates of Indebtedness from the State to the County Board of Education which these Warrants redeemed, included a certificate of indebtedness for the Bonus Fund?

"3. If not, can the amount of this contract made by order of the County Board of Education be paid from any other funds?

"4. I might add that certainly at the time this contract was made, it was exceedingly difficult to secure a Depository for School Funds, and my efforts at the time convinced me that one could not be obtained without this payment for expense for clerical service."

In my opinion the County Board of Education may pay the Depository Bank for said clerical assistance according to said contract for the year 1935-36 out of the Minimum Program Fund.

This office has previously ruled that the Bonus Fund may be used to compensate a bank for clerical work in handling a school treasurer's account when it is necessary to use the same to furnish a place in which public school funds would be safe.

See Biennial Report of Attorney General, 1930-1932, p. 568.

The appropriations which had heretofore been made to the Bonus Fund were taken from said fund and paid into the Minimum Program Fund by the passage of Act No. 326, H. B. 945, approved September 2, 1935 (General Acts 1935, p. 75) which provides in part as follows:

"Section 3. MINIMUM PROGRAM FUND.—That in addition to all other moneys appropriated for the public elementary and high schools of the State, there is hereby appropriated to the State Board of Education out of any funds in the treasury not otherwise appropriated for the fiscal years ending September 30, 1936, September 30, 1937, September 30, 1938 and September 30, 1939, the following sums which in accordance with the statutes and the regulations of the State Board of Education relating to the expenditures of such fund, shall be used for providing a minimum term and for the equalization of educational opportunity in the public schools of the State: a. The following funds and appropriations are hereby consolidated with and made a part of the

minimum program fund and henceforth shall be included as a part of the minimum program appropriation: * * * (5) The appropriation previously known as the Bonus School Fund, amounting to \$268,000 annually. * * *

As it was necessary at that time to have a bank act as the Custodian of the School Funds, and in your letter you state that you could not obtain one without agreeing to compensate the bank for clerical help, in my opinion you were justified in entering into the contract with the Alexander City Bank, and the payments for clerical assistance should be paid to the Bank from the Minimum Program fund.

Section 2 of Act No. 295, H. B. 852, approved September 2, 1935 (General Acts 1935, p. 714) provides in part as follows:

"Section 2. PURPOSES AND PLAN OF APPORTIONMENT.—In addition to all other appropriations and apportionments of public school money now provided by law and made available for elementary and high schools there shall be apportioned and paid to county boards of education from the Minimum Program Fund the amounts to be determined as hereinafter provided and in accordance with regulations of the State Board of Education. This Minimum Program Fund shall be used principally (1) to aid in providing at least a seven months' minimum term for all schools, and (2) to assist in the promotion of equalization of educational opportunity for all children in the public elementary and high schools. * * *"

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

October 29, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Where witness summoned to appear in more than one criminal case in one day, he is entitled to claim and receive his fee where payment is available in every case where he proves attendance.

Opinion by Asssistant Attorney General Loeb.

Dear Sir:

I have your letter of October 9, 1936, in which you request my opinion as follows:

"Regarding witness fees in Criminal cases where witness appears in more than one case on the same day, I am familiar with the following opinions that your office has rendered in connection with Section 3770 of the 1923 Code of Alabama.

"Page 306—Biennial Reports for 1926-1928

Page 401—Biennial Reports for 1928-1930

Page 136—Biennial Reports for 1930-1932.

Opinion to Hon. J. B. Hilliard, Clerk, under date of June 14, 1935.

Opinion to Hon. Cecil Deason, Solicitor, under date of December 13, 1935.

"These opinions appear very technical in their construction and after having read the five of them, there is still uncertainty in the minds of the clerks of the Criminal Courts here as to their exact application.

"The confusion in the minds of the clerks seems mainly to be caused by the requirement that the witness make a separate 'election' as to what case he is claiming his fee in. According to these various opinions and the construction of the law placed in them, based on the wording of Section 3770, a witness to the writer's mind would be doing the equivalent of 'electing' to claim his fee when, after the disposition of a case, he proves his attendance.

"The trouble in the minds of all of us in connection with these previous rulings is the general thought that the law is held to mean a witness must go to the clerk at the commencement of any day's session of the court and where he has been subpoenaed to appear in more than one case, he must tell the clerk that he wishes to select such and such a case in which he wishes to choose to claim his first witness fee. Then, if that case is not reached that day, and although the witness testifies in several other cases on the same day and final determination and disposition is made of all the other cases, due to the fact that the case he had 'elected' to choose his fee in had not been disposed of, he would not be entitled to claim any fee in any of the other cases.

"Under the laws setting out the costs to be taxed against a defendant in a Criminal case, it is the duty of the clerk to include the costs account of any State witnesses that have been subpoenaed. If these witnesses subsequently do not prove attendance, there are local and general laws that direct what shall subsequently be done with any witness fees collected by the clerks that are not claimed and paid out to the witnesses to whom they are due. Primarily, I think that it is generally agreed that a witness fee is taxed against a defendant for the benefit of the witness himself. The laws even go so far to provide that in the event a defendant is not convicted and, consequently, if no costs are collected from him, the clerk in counties where such a fund is maintained, may thereupon so endorse the facts upon a witness' certificate and he can collect his fee from the County Fine and Forfeiture Fund. Of course, there are various provisions in the different counties effecting the payments of witness fees, and in Jefferson County witnesses for the State in the Circuit Court can, after having proved their attendance, take their witness claim to the County Treasurer and immediately collect their fee, which is paid out of the County General Fund, even though the case may not have been finally disposed of that day and is continued to another session of the Court. Of course, that would not apply if the case is continued from day to day and is in the process of being tried continuously. In the Jefferson County Court of Misdemeanors, the law provides that a witness shall be entitled to the same witness fee as is provided for the County courts of the State. This particular Court also has a provision that if a witness does not claim his fee within six months after it has been collected by the clerk, then the clerk is to turn it into the General Fund of the County.

"Using the Jefferson County Municipal Court along with the above mentioned constructions of Section 3770 of the Code and presuming that a witness had to select (before any cases were tried on a given day and where he had been subpoenaed to testify in more than one), what case he would claim his attendance fee in, on account of the system of operation of this Court, it would be practically impossible for a witness to have any idea as to what cases would be reached or what cases tried, or what cases would be tried first. There is no docket set in the regular sense of this Court for the use and guidance of the Judge and the Solicitor determines what cases are to be considered by reference to the affidavit and warrant of arrest. He brings these to Court in his pocket and shuffles them all around before and during the Court and as he calls a certain case, he lays before the Judge the affidavit and warrant of that particular case and it is from this information that Judge Abernathy conducts the hearing. The Judge then gives the affidavit and warrant of arrest to his clerk and directs the clerk to write on the warrant whatever order the Court determines for that particular case.

"In the Circuit Court here, two, three, and sometimes more different judges will try criminal cases on the same day. One judge will sound the docket and assign the cases that are ready to the various other judges, including himself. From this system, it would be impossible for a witness to be able to go to a clerk before the court started on any given day and know what case he would be best protected in to choose or 'elect' to choose his fee.

"It is the writer's opinion that insasmuch as the defendants are taxed with the cost including witness fees in every instance, Section 3770 of the Code contemplates that a witness is entitled to prove his attendance and claim a fee in every case he has properly appeared in, provided he makes his claim within the time prescribed by law. In the above referred to Jefferson County Municipal Court, a witness cannot collect his fee from any source unless the defendant pays off. I do not think the laws ever contemplated that a witness fee should be taxed against a defendant for the benefit of the County. Yet, that is what is happening in this Municipal Court here where a witness has testified in several cases on the same day and the clerk has not paid him a fee but in one case.

"If your previous ruling would be clarified to the extent of holding that a witness could claim his fee or 'elect' to choose the case he was claiming it in, in all cases where he was duly subpoenaed and testified and where those cases were disposed of, even though they had been several in number on the same day, this writer believes it would be clearer for the clerks and still carry out the intent of Section 3770. In other words, if it can be directly stated that in every case where a witness proves his attendance he is entitled to claim and receive his fee, where payment is available. I am sure that it would clear the matter up. Under Section 3769 of the Code the law clearly makes it a duty of the clerks of the various courts to issue a witness certificate to each and every witness appearing on the part of the State. It seems clear to me that when you consider Section 3770 in its proper connection with Section 3769, that the clerk has no discretion but to certify to each and every witness who properly proves his attendance that he is entitled to such

and such a fee as evidenced by the witness certificate that the law directs he must give to the witness.

"From the fact that there have been several rulings made on the matter of witness fees in Criminal cases and from the further fact that there is still confusion as to the exact construction of the laws pertaining to these fees, may I respectfully request that you give this letter your earliest attention and render an opinion that will eliminate any uncertainties or technical consideration in connection with a witness being able to claim and collect as many fees as there are different cases in which he may be summoned to appear."

It appears from your letter that the confusion arising from the opinions set forth therein centers around a construction of the term "select" or "elect" found in Section 3770 of the Code of Alabama of 1923. This section provides as follows:

"FEES OF STATE WITNESSES WHEN SUBPOENAED IN MORE CASES THAN ONE.—A witness for the state, attending in more criminal cases than one at the same time, shall only be entitled to fees in one case, to be selected by him while so attending; but if after the case in which he elects to claim his fees is disposed of, his attendance is required in the other case or cases, he shall, for such attendance, be entitled to claim his per diem in such other case, or, if more than one, in the one in which he may then elect to claim his fees; and so on until all the cases in which he is required to attend are disposed of by trial, continuance, or otherwise."

In my opinion, the terms "select" or "elect" refer to the presentation by the witness of his proof of attendance to the Clerk of the Court in which he has served as a witness.

The primary purpose of the statute (Section 3770, *supra*) to prevent the witness from being entitled to multiple pay for the single service. Thus, if three cases are set for trial upon the same day and the same witness is summoned in each of them, if the first case is disposed of upon that day, and the witness is discharged; and the second case is disposed of on the same day, and the witness discharged; and the third case is disposed of on the same day and the witness is discharged, he may claim per diem and mileage in the first case, and per diem only in the other two cases. Of course, he must have elected, as that term is hereinabove defined, while in attendance upon the court to claim his fee in the first case before he actually served as a witness in the second case. To hold otherwise would be to allow the witness to serve in two or more cases and await disposition of all before making his election as to which he shall charge his fees. However, if he is summoned as a witness in three cases set for the same day and they are continued from day to day so that at the time he is discharged as a witness from the first case which is disposed of, more than one day's attendance has accrued, he must make an election as to which of the cases he will claim mileage and attendance for the previous days awaiting call as a witness; and, having so elected, the subsequent attendance in the next case called can only be allowed for the time for which he was not compensated in the case in which he elected to claim his compensation.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

November 3, 1936.

Hon. G. D. Byars,
Sheriff, Lawrence County,
Moulton, Alabama.

An officer without a search warrant may search a vehicle which he has probable cause for believing contains prohibited liquors, but such probable cause must arise from the facts and circumstances known or made known to him.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of recent date in which you request my opinion as follows:

"Please give me a ruling as to whether I must have a search warrant to be able to search a suspicious car for whiskey. I do not wish to impose on all cars but there are several that I know to be hauling liquor regularly, and I do wish to dent their activities."

In answering your request, I call your attention to the case of *Tranum v. Stringer*, 216 Ala. 522, 113 So. 580. This case is an action in damages against Tranum who was at the time a Deputy State Law Enforcement Officer. Justice Bouldin, in rendering the opinion of the Court, held:

"An officer may lawfully, under Const. U. S. Amend. 4 (Const. Bill of Rights Ala. 1901, Section 5), search an automobile on the public highways without warrant where he has probable cause for believing that it contains contraband or intoxicating liquor."

But there is a distinction between probable cause for believing and just simply believing. On this phase of the case Justice Bouldin has this to say:

"The measure of legality of a search of an automobile on a public highway without warrant by a prohibition officer under Const. U. S. Amend. 4, or Const. Bill of Rights Ala. 1901, Section 5, is whether the officer has reasonable or probable cause to believe the automobile contains liquor being illegally transported."

Therefore, my opinion, based on the case cited above, is that an officer may search a vehicle for prohibited liquors where he has reasonable or probable cause for believing such vehicle contains prohibited liquors, but this must be based on such facts as would warrant a reasonably prudent man to act. This simply means that a mere belief is not sufficient. Such a belief with nothing more is a mere guess which would not justify the officer in making the search. The two above quoted paragraphs from Justice Bouldin's opinion were based on the Federal Constitution and Bill of Rights, but he winds up his opinion with the following conclusion:

"We conclude that under the Constitution and laws of Alabama the sheriff and other law enforcement officers have the same authority to search automobiles without warrant as federal enforcement officers all subject to the rule of probable cause as above defined."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

November 3, 1936.

Hon. Burr R. Reeves,
Sheriff, Pike County,
Troy, Alabama.

Uniform Firearms Act (Acts 1936, p. 51)—

Pistol taken from person convicted of carrying concealed weapon may be returned to the owner notwithstanding Uniform Firearms Act.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"At the October term of the County Court of this County, one G. D. Herren was convicted on charge of Carrying Concealed Pistol. The defendant has paid fine and cost and now requests the return of his pistol, which is being held by the writer as Sheriff.

"Section 12 of the Uniform Firearms Act reads as follows:

"'CERTAIN TRANSFERS FORBIDDEN: No person shall make any loan secured by a mortgage, deposit, or pledge of a pistol contrary to this Act, nor shall any person lend or give a pistol to another or otherwise deliver a pistol contrary to the provisions of this Act.'

"In this connection, I would like to have your opinion on the following questions:

"1. Would I be acting within the Law in delivering this pistol to the defendant?

"2. If so, what procedure would be necessary?"

Section 12 of the Uniform Firearms Act (Acts 1936, page 51) does not operate upon such a "transfer" as is contemplated in your inquiry. Your first query is, therefore, answered in the affirmative; and an answer to your second question is unnecessary.

In the absence of statutory provisions, forfeiture or confiscation of firearms taken from persons violating the law relative thereto, is not authorized. 68 C. J. 71, article 85.

You are at liberty to return the pistol held by you to the owner without any formal procedure.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 3, 1936.

Hon. C. W. Marsh,
Treasurer, Choctaw County,
Butler, Alabama.

County Financial Control Act.

1. No department or agency of the county can, in any fiscal year, incur obligations in excess of the amount allotted to that department by the county governing body in its budget for that fiscal year.

2. The county governing body of a county may, from time to time, as conditions require, revise its budget for the fiscal year.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of September 4, 1936, which follows:

"Under the County Financial Control Act the Board of Commissioners of Choctaw County set up the amounts for the budget, for the different officers, as best they could, based upon the estimates furnished by each officer for his particular department. As this is the first year to be upon a budget system, naturally some of the amounts allowed are too small while others are too large. Please therefore advise me if, as County Treasurer, I can use the amounts left over from some whose allotments were large, to furnish paying claims for those whose allotments were too small? That is, may I allow some departments to go over, provided the grand total of the budget as adopted does not exceed the amount allowed for everything?

"Under Section 14, of the Act, it would appear to me that any department that will exceed the amount allotted to it by the Board, cannot be allowed to go over, on the other hand it appears that if the Board of Commissioners set an allotment so low that some County Officer will have to be deprived of some of his salary on account of having to have a certain amount of supplies for his office, in order that he might carry on the work of the said office, that some arrangement should be provided to take care of his salary, especially in those cases where the officer asked for more than the Commissioners allowed him. To illustrate, the Tax Assessor has to have certain necessary supplies and has to have certain plat books etc. made in order to carry on the work of his office. His estimate was cut low by the Board of Commissioners and as a consequence he cannot pay for the necessary things for the operation of his office if there is no provision for him to exceed the amount allotted to him."

It is my opinion that a department or agency of a county cannot incur an indebtedness during a fiscal year in excess of the amount allotted to that department or agency in the budget for that fiscal year which is made by the county governing body in accordance with the provisions of Act No. 379 (General Acts, 1935, page 803, approved September 9, 1935), which is probably known as the Lee County Budget and Financial Control Act. Section 14 of this Act reads as follows:

"Section 14. OFFICE SUPPLIES AND EX-OFFICIO FEES. It shall be the duty of every County Official who is authorized by law to purchase supplies for the use of his office, and every County Official who is entitled under the law to receive from the county what is known as ex-officio fees, to prepare and submit to the Board of Revenue, County Commissioners, or other like governing body, at or before the meeting of such Board at which the County Budget is adopted, and estimate of the amount necessary to be spent by him for office supplies, and the amount estimated by such official as will be due such officer as Ex-Officio fees, during the following fiscal year. And such Board of Revenue, County Commissioners or other like governing body shall examine into such estimates and pass upon them, allowing therefor such amounts as to such board may seem to be proper for the purpose, or purposes mentioned herein. And no obligation incurred by such officer over and above the amount or amounts approved by such Board and appropriated therefor shall be an obligation of the County."

I call your attention particularly to the last sentence of the above quoted Section of this Act which provides that no obligation incurred by such officer over and above the amount or amounts approved by such board and appropriated therefor shall be an obligation of the county. This provision is very clear to the effect that no officer, department or agency can incur an indebtedness during any fiscal year in excess of the amount or amounts allotted to it by the county governing body in its budget for that fiscal year.

However, there is nothing to prevent the county governing body from revising its budget from time to time as conditions may warrant. In an opinion of this office rendered to Hon. Roy Sanderson, Judge of Probate, Marion County, Alabama under date of May 8, 1936, the Attorney General spoke as follows in the last paragraph thereof:

"I have carefully examined said Act and find nothing therein that would prevent a withdrawal and/or reappropriation of funds. The Act requires the Court of County Commissioners, not later than its first meeting in October of each year, to make an estimate of the income for the general fund for the fiscal year beginning October 1st and to estimate for that same fiscal year the expense of operations, and to appropriate for the various purposes the respective amounts that are to be used for such purpose; but there is nothing in the Act that prevents said body from revising its estimate of the income or its estimate of the expense of operations or the appropriations made for the various purposes at a later date. As a matter of fact, such a revision will also invariably be necessary. In my opinion the only limit placed by the Act, supra, on the power of the governing body to make appropriations for valid and legal purposes is the provision in Section 3 of said Act which declares that the total of appropriations made for all purposes shall not exceed the total income of the county available for appropriation."

I enclose a copy of this opinion for your information.

In accordance with the statements in the opinion above referred to and quoted from, it is my opinion that, should your governing body find that, in its budget for this fiscal year, it has made an appropriation to some departments or agencies which are too large and that it has made appropriations to other departments or agencies which are insufficient, it could revise its

budget and reappropriate the amount to these different departments or agencies which it deems necessary. In this manner, if the governing body found that a particular department or agency had had too large an amount appropriated to it and that another department or agency had had an insufficient amount appropriated to it, it could make a readjustment of its budget, taking away from the one department or agency that portion of its appropriation which it deems to be in excess of the amount which that department or agency needs and could use this amount to supplement the appropriation of the department or agency, whose appropriation is deemed insufficient. In this manner, no unnecessary hardships would be worked on any department or agency. As also stated in the opinion to Judge Sanderson, *supra*, such a revision of a budget will almost invariably be necessary. A budget is based on estimates of both the income and the outgo and therefore cannot be made with absolute certainty. So, for the various departments or agencies effected thereby to function properly it becomes necessary for this budget to be revised from time to time, as it is found the actual income and outgo varies from the estimates of the income and outgo at the time the budget was originally made.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 3, 1936.

Hon. Henry S. Long, Pres.,
State Tax Commission,
Capitol.

INCOME TAX.—

Salary and wages received by officers and employees of Federal relief agencies, paid from United States funds, are not taxable income under state law.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of October 7, 1936, in which you request my opinion as follows:

"An opinion is requested as to whether or not salaries and wages received by officers and employees from the Federal Relief Agencies created by an Act of 1933 constitute taxable income under the State law and are required to be included in gross income of returns filed by such individuals.

"While Section 345.10, subdivision (f) of the Alabama Income Tax Law, approved January 10, 1935, would appear to exempt such income, it seems reasonable to assume that the Legislature intended to tax all salaries and wages of such employees, except the ones engaged in the exercise of essential Governmental functions. The Law is quoted as follows:

“The term ‘gross income’ — — — does not include — — — salaries, wages and other compensation received from the United States by officers or employees thereof, including persons in the military or naval forces of the United States.’

“The Federal Government in opinion I. T. 2859, XIV-1 CB 101 holds that compensation of officers and employees paid by the State from its public funds (as distinguished from funds granted it by the Federal Government) is exempt from Federal income tax. It further holds that compensation received from the Emergency Fund is not exempt to the extent that such compensation is paid by the State directly or indirectly from funds granted to the State by the Federal Government.”

I assume that the salaries and wages from Relief Agencies above referred to are from funds supplied by the United States Government. If this assumption is correct, such salaries and wages are not taxable under the state law and are not required to be included in “gross income” in returns filed by individuals receiving same.

The Alabama Act provides that “gross income” does not include “salaries, wages and other compensation received from the United States by officers or employees thereof*.” Any salary or wages paid from United States funds would not be included.

The excerpt which you furnish me of ruling I. T. 2859 XIV-1 CB 101 reads in part, as follows:

“Compensation of officers and employees paid by the State from its public funds (as distinguished from funds granted to it by the Federal Government) is exempt. To the extent that such compensation is paid by the State either directly or indirectly from funds granted to the State by the Federal Government under the provisions of the Federal Emergency Relief Act of 1933, it is taxable. Compensation paid directly by the Federal government is also taxable. If the compensation is paid by the State from a fund composed in part of State funds and in part of Federal grants, that part paid from Federal grants is taxable”

The above applies to Federal taxes. Conversely, under the Alabama Act, compensation paid by the Federal government would not be taxable.

In the case of **Wiseman v. Dyess**, 72 S. W. (2d) 517 (Arkansas 1934) the court held that automobiles and trucks purchased with funds made available to the State by Federal Emergency Relief Administration belonged to the United States and did not become the property of the State. (See also opinion to A. H. Collins, State Department of Public Welfare issued by this department under date of October 6, 1936).

Recently, in a case which was not appealed, the Circuit Court of Montgomery ruled that a painter who was on a Relief job, who was paid by the State from funds supplied by the Federal Government, was not an employee of the State.

I am, therefore, of the opinion that under the wording of our present statute, salaries and wages received by officers and employees of Federal Relief Agencies, paid from Federal funds, are exempt.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 3, 1936.

Hon. Fred H. McDuff,
Sheriff, Jefferson County,
Birmingham, Alabama.

Proceeds realized from sale of property under venditioni exponas for satisfaction of judgment should first be applied to payment of taxes rather than costs.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of September 4, 1936, in which you request my opinion as follows:

"Where an attachment has been levied in favor of the landlord on personal property and judgment is rendered for the Plaintiff against the Defendant with condemnation of property levied upon for the satisfaction of the Plaintiff's judgment, upon which judgment a Venditioni Exponas is issued to me, commanding me to sell the property for the satisfaction of the judgment, Acts of Alabama, 1919, page 447, Section 404, provides that it is the duty of the Sheriff to ascertain from a tax collector the amount of unpaid taxes due the State and County, and that the proceeds of the sale shall first be applied in payment of the taxes.

"In making the levy, storage pending judgment and sale, and legal advertising fees are necessary expenses to subject the property to the satisfaction of the judgment, or to convert same into money so same can be applied in reducing Plaintiff's judgment.

"Please advise what distribution shall be made of the proceeds of the sale where an insufficient amount is pending to pay the taxes and whether or not the expense of levying necessary notices and advertising fees would be prior to the ad valorem taxes or whether it would be the duty of the Sheriff to incur such expenses without compensation and to apply the entire proceeds to the reduction of taxes or should the cost incurred by reason of levy, advertising, etc., be paid first and the remaining, or net, proceeds of the sale be applied in part payment of taxes?"

This is not a tax sale and is not a proceeding to preserve a fund. All costs are incurred by the parties to the suit, who are liable for their payment.

The State not being a party, is not liable. As was said in the case of *Ex Parte L. & N. Railroad*, (124 Ala. 547, 27 So. 239), "* * * it cannot be seriously contended that a judgment for costs against one not a party to the suit, and not before the court, could be upheld." To allow payment out of funds to which the State is entitled, is in effect requiring the State to pay these costs.

Further, action of an individual should not be allowed to prejudice the rights of the sovereign.

I am, therefore, of the opinion that the taxes should be paid first out of the proceeds of the fund and if this exhausts the fund, costs should be collected from one of the parties to the cause.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 4, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Courts of County Commissioners—

Authority to Compromise claims—

Under Acts 1933, page 201, the Court of County Commissioners has no authority to compromise claim of county against officer thereof unless the same be of "doubtful validity".

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"On December 17, 1935 you rendered an opinion relative to sub-section 11 of Section 6755 of the Code of 1923 as amended by Acts 1933, page 201, Act No. 184.

"In this opinion you stated that the Commissioners Court had authority to compromise amounts charged to officials by Examiners of Accounts where the same is of **Doubtful Collectibility**.

"My contention is that where an official has a bond and the charge against the official is legal the Court of County Commissioners has no jurisdiction in the matter and therefore cannot relieve the official of paying said charge. If the official has a bond sufficient to cover the amount legally charged there is no doubt that the amount due can be collected.

"Please advise me as to your interpretation of the words 'Doubtful Collectibility'."

Generally, the authority and jurisdiction of the county governing body are limited to such as are expressly or impliedly granted to it by the Legislature.

As pointed out in the former opinion of this office referred to in your letter of inquiry (Quarterly Report of the Attorney General, Volume 1, page 342) the original authority to that end was granted by sub-section 11 of Section 6755 of the Code of 1923. That sub-section was amended by Acts 1933, page 201, as follows:

"That sub-section 11 of section 6755 of the Code of Alabama of 1923 be amended to read as follows: 11. To compromise on such terms as

they may deem just, all doubtful claims in favor of counties when such claims arise on account of moneys, heretofore paid in good faith, by order of such courts, or in any case where they deem it to the best interest of the county."

One effect of the 1933 amendment was the addition of the clause: "or in any case where they deem it to the best interest of the county". Prior to the amendment, the Supreme Court construed the sub-section in **Mobile County v. Williams**, 180 Ala. 639, 61 So. 963. There the court said:

"The court of county commissioners have no right to compromise, under the authority conferred by the above section, any claim in favor of the county, except such claims as were in existence when on August 26, 1909, the Code of 1907 was adopted, and then only such claims as are doubtful and which were paid in good faith, by order of the court of county commissioners. The words 'doubtful' and 'good faith' used in the above subdivision, are jurisdictional and, unless the claim is of doubtful validity and the money was paid in good faith by order of the court, then the members of the court of county commissioners, acting in said matter, are without authority to act and if under such circumstances they do act and compromise such a claim then such compromise is void and not binding on the county."

The added clause "or in any case where they deem it to the best interest of the county" has the effect of broadening and extending the preceding clause of the statute "when such claims arise on account of moneys, heretofore paid in good faith, by order of such courts". Prior to the amendment the claim must have been such as was in existence at the time of the adoption of the Code of 1907 and arose on account of moneys theretofore paid in good faith by order of such county governing body. Since the amendment, the authority to compromise has been extended to include all claims of doubtful validity, whether or not they arose on account of money paid in good faith by order of the court. But it is essential under the 1933 amendment, as it was under the original subsection, that the claim to be compromised be "of doubtful validity". **Mobile County v. Williams**, supra.

In this connection, the following excerpt from the opinions in **Williams** case, supra, is peculiarly apt:

"To place the construction upon it contended for by appellee would be, to use almost the very words of a distinguished judge who was discussing a question somewhat similar to the one now under consideration, to pave the way by which it would be easy for a public officer, under the guise of a legal claimant against a county, through the aid of its commissioners, if the latter were inclined to close their eyes to legal prohibitions, to unlawfully obtain and appropriate to his own use the public money, and, when called upon in a court of justice to account for the same, deny the right of the county's recovery upon the ground that he had made a compromise with the commissioners who had, by their own illegal act, enabled him to obtain the money. We cannot believe that it was the purpose of the Legislature to thus allow public officials to thus condone their own illegal acts; and this statute must be construed according to the legislative purpose."

It is, therefore, my opinion that if the examining agency charges a public officer with money on account of malfeasance, misfeasance or non-

feasance in the performance of the duties of his office whereby public moneys are lost to the county, and the facts upon which the charge is based leave no reasonable basis for an honest doubt, by an advised mind, as to the validity (that is to say, the legal sufficiency) of the charge, then, in such event, the county governing body is without authority or jurisdiction to compromise the claim.

The fact (if such be the fact) that, because of the financial condition of the officer or of his surety, the full amount of such claim cannot be realized by suit or otherwise, is not sufficient to confer jurisdiction upon the county governing body to enter into a compromise.

It is not to be understood from this opinion that the charge as reflected in a report of examiners of account is absolutely conclusive upon the right of the county governing body to compromise a claim based thereon. Investigation into the facts upon which the charge is based may be made; and, if the facts do not support the charge of the examiner of accounts, or if that official incorrectly applies the law to the facts, then the county governing body may compromise the claim if it is of "doubtful validity". On the other hand the county is not concluded by the decision of the county governing body that any claim is of "doubtful validity". The final decision as to the validity of the claim based upon a charge made by the examiner of accounts, as well as to the efficacy of a compromise of the same by the county governing body rests with the Attorney General in cases not litigated) or with the courts. And upon a review of the charge of the examining agency or of the compromise of the county governing body, the facts will be ascertained and the law applied thereto in determining the propriety of the charge or validity of the compromise.

To the extent that the former opinion of this office (Quarterly Report of Attorney General, Volume 1, page 342) may conflict with the conclusions herein reached, the same is withdrawn and overruled.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 5, 1936.

Hon. H. G. Mitchell,
Sheriff, Fayette County,
Fayette, Alabama.

Seizure fee as provided in possession of prohibited liquor cases can only attach in such cases and no others.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 8, 1936, in which you request my opinion as follows:

"OPINIONS IN THESE CASES, PLEASE. Re-Seizure fees in these cases: We had a family here in Fayette, in destitute circumstances, the husband swapped his shirt, watch and all the meat in the house for

liquor, his wife went and reported the case, and obtained a **SEARCH WARRANT**, describing above property, officers went to the negroes house and found property as described in the **search warrant**, negroes were arrested, jailed and brought into open court, under the charge of **VIOLATING PROHIBITION LAW**, the day of trial both negroes plead guilty in open Court, to said charge, consented to a fine of \$50.00 and costs in the cases. In the above cases would the **SHERIFF** be entitled to seizure fees of \$3.00?

"Question 2. Where a warrant is sworn out for Violating Prohibition Law after the officers have arrested the defendant with liquor, and made bond, defendant brought to trial, the Solicitor for the State, adds the court of Public Drunkenness, the defendant pleads guilty to public drunkenness, and then knocks the **SHERIFF** out of the **SEIZURE FEES** and the **MILEAGE FEES** in the case, in this case would the sheriff be entitled to his seizure and mileage fees?"

My answer to both of your requests is in the negative. As I gather from your statement of facts the search warrant was not for prohibited liquors, but was a warrant for the search of the personal property that had been traded for liquor. This being true there could be no seizure fee as is provided for search in prohibition cases. As to your second request, here the defendant was convicted for public drunkenness and not for possession of prohibited liquors. This being true, no seizure fee as is provided in prohibition cases could attach.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 5, 1936.

Hon. J. S. Sandlin,
Sheriff, Morgan County,
Decatur, Alabama.

Scottsboro cases—Appropriation of Legislature (Acts 1935, page 239) held not to include purchase of stationery and supplies for use during Scottsboro trial.

Opinion by Assistant Attorney General Small.

Dear Sir:

You request my opinion as follows:

"I purchased office supplies to the amount of \$52.00 from the Tennessee Valley Printing Co. of Decatur, Alabama, for the Scottsboro Case and this bill was properly certified and filed with Mr. J. E. Reid, the Circuit Clerk of Jackson County, but was disallowed by Mr. Reid awaiting the opinion of the Attorney General.

"These supplies consisted of jury cards, legal cap paper, envelopes, letterheads, etc., all of which was used during the trials of the Scottsboro negroes. We believe this to be a just claim against the Scottsboro Funds and would appreciate your early opinion or ruling on this claim."

In reply, I wish to advise that, in my opinion, this claim cannot be legally paid from the funds appropriated for the payment of officers and witness fees in the Scottsboro cases (Acts 1935, page 239). The act referred to specifically says that the appropriation here made is for the payment "to the persons to whom originally due, their heirs, executors and administrators all unpaid costs and fees of jurors, officers and witnesses which are legal charges against any county fund * * *".

In my judgment, the words "costs and fees" as here used contemplate the costs and fees authorized by law for the persons named.

Your claim does not fall within the category of either costs and fees as here used and, therefore, cannot be legally paid from this fund. See Quarterly Report of Attorney General 1936, Vol. I, page 145.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 5, 1936.

Hon. Eugene H. Hawkins,
Judge of Probate,
Jefferson County,
Birmingham, Alabama.

Probate Judges—Amount received for performing marriage ceremony is not for service required by law, and when Probate Judge is on salary basis, same is not payable into county treasury.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Please advise whether or not the Probate Judge of Jefferson County is allowed to retain fees collected for performing marriage ceremonies, or whether such fees should be turned into the County Treasury."

In reply I advise that in our opinion appearing in Quarterly Report Vol. I, p. 186 I held:

"Now the fee under Section 9005, supra, has nothing to do with the issuing of the license, as the parties contracting may or may not have the rites celebrated by the Judge of Probate or as we say in common parlance, have him perform the ceremony, but when he is called on to perform in this capacity for this specific service, he must collect a fee of \$2.00, which is altogether different and has no connection with the issuance of the license."

Section 9005 provides:

"FEES FOR MARRYING.—Any judge, justice of the peace, or licensed minister of the gospel, celebrating the rites of matrimony, is entitled to two dollars."

It appears from the foregoing that the authority to perform marriage ceremony is conferred on the Probate Judge, but it is not a mandatory requirement of law.

This being true, I do not think that where he does perform the ceremony and collects a fee therefor, such fee is a part of the official fees or receipts of the office of Probate Judge and hence any such compensation accrues to him personally.

You being paid on a salary basis, and this fee not being for a service required, albeit though authorized by law, accrues to you personally and in my opinion you are not required to pay the same into the county treasury.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

November 5, 1936.

Hon. J. R. White,
Chairman, Board of Revenue,
Walker County,
Jasper, Alabama.

Son-in-law, under the law, is not required to support the Father and Mother of his wife who are dependent.

Opinion by Asssitant Attorney General Haynes.

Dear Sir:

I have your letter of October 12, 1936, in which you request my opinion as follows:

"Is it the duty of a Son-in-law to support his Father-in-law or Mother-in-law who is a pauper, the Son-in-law being a man of means and of sufficient ability, but the Son-in-laws wife has no property of her own nor any separate estate.

"This question is asked under the provisions for care, support and maintenance of the poor and paupers as provided under Section 2806 of the 1923 Code et seq, as amended by Acts 1927, page 521."

My answer to your request is in the negative. I call your attention to Section 2803, Code of Alabama of 1928 (Michie) which is as follows:

"RELATIVES LIABLE TO SUPPORT POOR; HOW ENFORCED.—The father, grandfather, brother, mother, grandmother, child, or grandchild, of any poor persons unable to maintain themselves, being of sufficient ability must support such persons; and failing to do so, any county in the state, having made provision for such persons, may sue their father, grandfather, brother, mother, grandmother, child, or grandchild, of full age, or either of them, before any court having jurisdiction, and recover at the rate of eight dollars a month, for the time such county has made provision for such persons; the court or jury, trying the same, being satisfied from the evidence that the defendant was of sufficient ability to provide for their support."

It is true the above section says child but I do not think this would extend to a son-in-law. All others mentioned in said section are such, of course, as are related by consanguinity to the pauper. The son-in-law does not inherit from the Father-in-law estate and has no control of the estate inherited by his wife from her Father's estate so long as the wife is living and at her death he gets only a life estate in the property of his wife and this terminates at the death of the husband. See the case of Englehardt v. Young's Heirs, 76 Ala. 534, 46 C. J. 1340 (Section 185) D.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 6, 1936.

Hon. L. C. Garrison,
Judge of Probate,
Walker County,
Jasper, Alabama.

Person who maintains definite location in various towns in which he shows motion pictures with equipment moving from place to place is not subject to transient license but must pay regular license in each community in which place is located.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of September 11, 1936, in which you request my opinion as follows:

"The license inspector of Walker County has requested me to secure a ruling from you on the following:

"There are several people in Walker County operating what might be called transient moving picture shows. Each of these parties operate in four or five towns. They rent a house in each town in which they show their pictures and pay the regular state license as provided by Section 96 of the License Schedule. However, each of them uses only one moving picture machine and that moving picture machine is moved from town to town. Each of these parties will rent a motion picture film for, say four or five days. They will then take that film and their moving picture machinery and move from one town to another where they have buildings rented and show the picture in those buildings in each of the four or five towns.

"Section 95 of the License Schedule provides for a license tax of \$50.00 for the first week and \$25.00 for each additional week thereafter for every person operating a transient moving picture show in each place where it is operated. I would like to be advised if the parties showing in several towns under the conditions outlined above are classed as operators of transient moving picture shows and whether or not they are required to pay the license tax as provided for by Section 95 of the License Schedule."

I am of the opinion that persons who operate moving picture shows in the manner detailed by you are not liable for transient license. They should be taxed under Section 348, Schedule 96 instead of under Schedule 95. The transient license in Schedule 95 was designed for those who go from place to place exhibiting a picture or group of pictures in "road show" fashion. Moving part of the equipment from place to place would not make the performance "transient", and I do not think the legislature intended for such operations to be taxed under Schedule 95.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 9, 1936.

Hon. Chas. E. Bragg,
Judge of Probate,
Lawrence County,
Moulton, Alabama.

Act No. 145, Local Acts 1936, page 90, approved April 21, 1936, is unconstitutional and void as violative of Section 96 and subsection 24 of Section 104 of the Constitution of Alabama of 1901.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 7, 1936 which follows:

"Page 90, Local Acts of 1936 raises commissioners pay in Lawrence County from \$3.00 a day to \$4.00 a day.

"To what term of office will this raise apply and will the two new Commissioners beginning terms of office in January, 1936, receive the same as the two old Commissioners whose terms of office began in January 1935?"

You specifically ask me to advise you as to what term of office the increase in compensation provided by Act No. 145, supra, applies. In reply, I advise you that this increase in pay does not apply to any term of office because the act providing the same is unconstitutional and void.

The said act is violative of Section 96 of the Constitution of 1901 which reads as follows:

"The legislature shall not enact any law not applicable to all the counties in the state, regulating costs and charges of courts, or fees, commissions or allowances of public officers."

See cases of *Carnley v. Moore*, 218 Ala. 274 at page 276 and opinions of this office addressed to Hon. Winston Stewart, Judge of Probate, Coosa County, Rockford, Alabama, under date of January 23, 1936, (Quarterly Report of Attorney General, Vol. 11, page 70); to Hon. Watkins C. Johnston, Chairman, Board of Revenue, Macon County, Tuskegee, Alabama, under date of March 10, 1936 (Quarterly Report of Attorney General, Vol. II, page 95); and

to Hon. J. Lee Smith, Judge of Probate, Chilton County, Clanton, Alabama, under date of June 26, 1936 (Quarterly Report of Attorney General Vol. III, page 210).

The said act is also violative of sub-section 24 of Section 104 of the Constitution of 1901 which reads as follows:

"The legislature shall not pass a special, private or local law in any of the following cases:

"Creating, increasing or decreasing fees, percentages or allowances of public officers."

See **Carnley v. Moore**, *supra*, and opinions of the Attorney General to Watkins C. Johnston and J. Lee Smith, *supra*.

There is nothing before me, either in Act No. 145, *supra*, or in your request for opinion to indicate that, prior to the passage of this Local Act, the commissioners of your county were not paid as provided by the general law on this subject, which is Section 6771 of the Code of Alabama of 1923, as amended. I presume that they have been paid in accordance with the provisions of this section. If my assumption is incorrect and they have, prior to the passage of Act No. 145, been paid under the provisions of a local law which provides different compensation from the amount provided by the general law, then said local act is also unconstitutional and void as violative of Section 96 and sub-section 24 of Section 104 of the Constitution of 1901.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 9, 1936.

Hon. J. H. Green,
Clerk of Circuit Court,
Decatur, Alabama.

For any violation of any provision of what is known as the Uniform Firearms Act, the solicitor's fee is \$10.00.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 6, 1936, in which you request my opinion as follows:

"Will you please give me your official opinion as to what the proper Solicitor's fee to be charged upon a conviction for violating the 'Uniform Firearms Act', passed by the Legislature of Alabama at the extra session of 1936, page 51. Please let me have this opinion at your earliest convenience, as I am in need of same."

In answer to your request I call your attention to Section 17 of the Act you refer to (General Acts 1936, page 51 extra session). Section 17,

supra, has to do with the penalties for violation of any provision of the Act and is as follows:

"PENALTIES: Any violation of any provision of this Act constitutes an offense punishable by a fine of not more than \$500.00 (five hundred dollars) or imprisonment for not more than one year, or both."

You will note from the above that the offense included in the act is a misdemeanor for the reason the punishment is fixed by fine and imprisonment for not more than one year but I do not find where the act itself provides for solicitor's fee on conviction for any of the offenses included in the act so we are compelled to look to the general law under Section 3738, Code of Alabama of 1923, which section was to do with solicitor's fees. Here we find the following provision:

"For each conviction of a misdemeanor not otherwise provided for, \$10.00."

From the above we are of the opinion that the solicitor's fee for the conviction of any provision of the act, supra, is \$10.00. Biennial Report of Attorney General, 1930-32, pages 399 and 43.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 9, 1936.

Hon. R. L. Holcombe, Sr.,
Sheriff, Mobile County,
Mobile, Alabama.

Uniform Firearms Act—

Persons working in manner described in request for opinion held required to secure license provided by the Uniform Firearms Act before they may carry a pistol either on their persons or in automobiles.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of October 3, 1936, which follows:

"I request your opinion upon the following questions in regard to the Uniform Firearms Act, viz:

"1. Where an express company is doing an interstate business, accepting goods for shipment at the door and delivering goods received from other states to the door, do the following employees have to secure a license under said act:—Cashier in the office; clerks carrying money and other valuable articles from the office to the bank or to the depot; messengers operating automobiles; drivers delivering goods where there is occasionally no interstate shipment on the truck."

In reply, I advise that persons working in the manner, or manners, described in your letter of inquiry are required to secure the license pro-

vided by the Uniform Firearms Act before they may carry a pistol on their persons or in automobiles.

Section 6 of the Uniform Firearms Act sets out the persons or classes of persons who are exempted from the license provided by the act. Persons working in the manner, or manners, described in your letter of inquiry do not come within the class or classes of persons set out in Section 6. Therefore, it is my opinion that they would not be exempt from the provisions of the Uniform Firearms Act and that they would have to secure the license provided by said act before they could carry a pistol on their persons or in automobiles.

Some claim might be made by these persons that they should be exempt from the provisions of this Act since the work in which they are engaged is interstate commerce and since they only want to carry pistols for their protection while engaged in their work. In my opinion, this position could not be sustained. The Uniform Firearms Act which provides for the licensing of persons who carry pistols is a police regulation designed to protect the public safety of the citizens of the State. This is such an act as is within the legislative competency of the State of Alabama and does not amount to an interference with interstate commerce.

It is my opinion that all persons, other than those enumerated in Section 6 of the act, who wish to carry a pistol in this state, either on their persons or in automobiles, are required to secure the license provided by the Uniform Firearms Act, *supra*.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 12, 1936.

Hon. Wm. A. Conrad,
Deputy Clerk, Circuit Court,
Mobile County,
Mobile, Alabama.

If an officer is on a salary paid out of the General Fund of the county and is required to pay all fees collected by him into the General Fund and the county has a separate and distinct fund known as the Fine and Forfeiture Fund of the County, he being entitled to draw certain fees from this fund, then in this instance he should draw such fees from said fund and pay same into the General Fund of the county from which he draws his salary.

If, on the other hand, the Fine and Forfeiture Fund of his county has been abolished and merged with the General Fund, in this instance he is relieved of drawing said fees out of the General Fund which he is required to pay back as soon as drawn into the same fund.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 15, 1936, in which you request my opinion as follows:

"I hereby respectfully request your Honor's opinion on the following question, viz:—

"In view of the fact that the Clerk of the Circuit Court of Mobile County, Alabama, is paid out of the General Fund of Mobile County, a salary in lieu of clerk's fees, is it the duty of the said clerk to render to the county of Mobile, a bill for clerk's fees against Mobile County, for the use of Mobile County, in nol pross, acquittal, withdrawn and filed, abated by death and insolvent conviction cases?"

The answer to your request depends on whether or not Mobile has what is known as a Fine and Forfeiture Fund as set up under the general laws of the State apart from all other funds. If it has, then it is proper for you to make claim for your fees chargeable against this fund and payable out of the same and when so paid they should be paid into the General Fund of the county from which you draw your salary. If, on the other hand, your Fine and Forfeiture Fund has been abolished or merged with the General Fund of your county by Local Act or otherwise, then there could be no reason for you claiming your fees against this fund as the law does not require of an officer to do the unreasonable and useless thing, that is, draw money out of a fund and then in the next minute place it back into the same fund. See opinion of the Attorney General, August 26, 1936, to Hon. Festus M. Shamblin, Sheriff of Tuscaloosa County, Office Edition Book 13-A.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

November 13, 1936.

Hon. J. G. Duncan, Jr., Director,
Alabama State Employment Service,
627 Adams Avenue,
Montgomery, Alabama.

National and State Reemployment Services in performing duties prescribed by Wagner-Peyser Act, (48 Stat. 113 of 73 d Congress) and Act No. 372, (General Act of Alabama, 1935, p. 791, as amended) are not engaged in the business of hiring or soliciting laborers within the purview of Section 696, Code of Alabama, 1923.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of October 30, 1936, which is as follows:

"In connection with an employment situation that has recently arisen in the State of Alabama, your opinion is respectfully requested as to whether section 696, chapter 22, of the Political Code of Alabama (1923), requiring any person recruiting labor in Alabama for work in another state to pay a license fee of \$5,000, is to be construed to prohibit public employment offices in the State of Alabama from 'clearing labor between the several states', within the meaning of the Federal

statute, Public No. 30, 73d Congress, 48 Stat. 113, commonly known as the Wagner-Peyser Act.

"I am advised that, pursuant to the provisions of the Wagner-Peyser Act, the National Reemployment Service in Mobile, Alabama, having arranged for an interview of several unemployed shell and deck riveters by a prospective employer from Pennsylvania, was notified on the day of the interview, September 21, 1936, by a prominent corporation lawyer of Mobile that it had better refrain from recruiting labor in Alabama for work in another state unless it first complied with the Alabama statute mentioned above which, he asserted, provides that everyone, including public employment agencies, must refrain from such activity until it pays a license tax of \$5,000, a year or become involved, together with its employees in a breach of a criminal statute.

"Although the license tax statute and its accompanying penal provisions may seem broad enough to include a free public agency and its employees, it has occurred to me that it is directed exclusively to employment bureaus operated for profit and that consequently neither the Alabama State Employment Service nor the National Reemployment Service in the State of Alabama is subject to the law. The following statement of the relevant statutes and authorities, as they appear to me, is respectfully submitted to you for your consideration in order to clearly portray the issues apparently involved in the problem in question.

"The Alabama statute referred to, section 696, chapter 22, of the Political Code (1923) reads as follows:

'Each person who shall engage in the business of hiring or soliciting laborers to go or be employed outside of Alabama, or in furnishing, arranging or providing transportation for laborers to go beyond the limits of Alabama, or in advertising for such laborers, shall be a labor agent within the meaning of this chapter. All assistants, sub-agents, partners, associates or employees of any such person shall be subject to the license hereby levied, whether such license be paid by their employer, principal, partner, associate or not.'

"Section 697 imposes a state tax of \$5,000, and a county tax up to 50%, as determined by the county commissioners. Chapter 126 of the Alabama Criminal Code (sections 3980-3984) makes it a misdemeanor to engage in business as a labor agent without a license or without giving bond, or to employ assistants or agents who have not been licensed.

"The Wagner-Peyser Act, cited above, which provides for cooperation between the United States Employment Service and State public employment agencies and which specifies certain benefits to be paid by the Federal Government to States taking part in such cooperation, sets forth in part section 3(a) one of its purposes, as follows:

'...The bureau (United Employment Service) shall also assist in coordinating the public employment offices throughout the country and in increasing their usefulness by developing and describing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of

value in the operation of the system, and maintaining a system for clearing labor between the several states.'

"Act No. 372 (Alabama General Laws, 1935, approved September 11, 1935) accepts the provisions of the Wagner-Peyser Act and in section 2 gives to the State Department of Labor

'full power to cooperate with all authorities of the United States having powers or duties under such Act and to do and perform all things necessary to secure to the State of Alabama the benefits of such Act in the promotion and maintenance of a system of public employment offices.'

"This statute would not seem to be affected for purposes of the present inquiry by the fact that Act No. 447 (Alabama General Laws, 1935), approved three days later, also accepted the Wagner-Peyser Act and established a state employment service under an unemployment compensation commission. The latter statute has since been amended by Alabama Act No. 156 (approved April 21, 1936) so as to leave the State Department of Labor as the official agency to cooperate with the United States Employment Service.

"There is apparently nothing in Alabama Act No. 372, cited and quoted in part above, which limits the authority of the State Employment Federal agencies. No restriction seems to have been placed on the power of the State Employment Service to direct registrants to employment either within or outside of the State. Consequently it seems to me, in view of the importance of the function of the United States Employment Service to direct the movement of workers from areas of unemployment to centers of demand and in view of the cooperation of the State in furthering the general purposes of the Federal Act, including the acceptance by the State of benefits thereunder, that unless the Alabama legislature specifically qualified the nature of the cooperation between the State agency and the United States Employment Service, it intended cooperation in all respects and for all the purposes set forth in the Wagner-Peyser Act.

"It may be conceded that, although the State of Alabama may not impose any burden by tax or otherwise on a federal agency or its employees (*Home Insurance Company v. New York*, 134 U. S. 594) nor to charge it for the privilege of performing functions designated by Congress (*Fidelity and Deposit Company v. Pennsylvania*, 240 U. S. 319), no rule of law prevents a State from licensing its own agencies and imposing a tax upon their employees. But it would seem to me unlikely that the legislature of Alabama, in Act No. 372 accepting the Wagner-Peyser Act and creating a State Employment Service, intended to achieve this end which would be so inconsistent with the expressly stated purpose of the Wagner-Peyser Act.

"In order to prevent any confusion because of doubts which may exist concerning the application of the licensing statute to public employment agencies and to avoid serious interruption of the work of the National and State Employment Services, your opinion is desired and would be greatly appreciated."

In view of the facts stated in your letter, I am of the opinion that the National Reemployment Service does not come within the purview of Section 696, Code of Alabama, 1923, when it is engaged solely in the performance of its duties as prescribed by the laws of this State and of the United States of America. In my judgment, this agency would not be said to be "engaged in business" within the general meaning of this term, but on the other hand is engaged solely in the performance of civic or social functions intended to better an economic condition.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 20, 1936.

Hon. J. M. Lyon,
Chairman, Board of Revenue,
Shelby County,
Columbiana, Alabama.

County Financial Control Act—

Funds borrowed in accordance with Section 11, may be used for purchase of building, after allowance for all current expenses.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of October 31, 1936, in which you request my opinion as follows:

"Due to the expansion of duties devolving upon the county to meet the needs provided by law, this county has had to lease offices out in town away from the court house for the Health Department, the County Farm Agent, Department of Public Welfare, the County Home Demonstration Department, the Circuit Judge's office and that of the official court reporter. The Board of Revenue now has an opportunity to purchase a building which will house all the departments enumerated above, together with the Department of Education.

"The Board of Revenue of Shelby County has complied with the requirements of 'The County Financial Control Act', and has also had set aside an Emergency Fund as now required by law.

"This county is now indebted in a small amount beyond the constitutional debt limit. However, with the revenue in hand and the revenues derived from a loan made in anticipation of the collection of the tax revenues for the current fiscal year, the county has on hand, after setting aside the fund heretofore named, and also the Emergency Fund, a sufficient sum on hand to purchase or construct an office building of sufficient dimensions to house the several departments heretofore named. The questions that I desire your opinion on are as follows:

"First. Is the Board of Revenue authorized to take the surplus funds now on hand, derived in the manner heretofore stated, and con-

struct or purchase a county building for housing the several county departments heretofore named.

"Second. Would the Board of Revenue be authorized, notwithstanding the fact the county is beyond the constitutional debt limit, to borrow money in anticipation of tax revenues for the current fiscal year, and use the same for the purchase or construction of said county building, provided they had complied with The County Financial Control Act and the Emergency Fund Act heretofore referred to."

If by "surplus funds" you refer to sinking funds, I am of the opinion that such funds could not be used for the purchase of a building.

The Board would be authorized to borrow in anticipation of tax revenues for the current fiscal year in accordance with the provisions of Section 11 of the County Financial Control Act (1935 Acts page 803), and if funds are sufficient after allowance for **all current expenses**, to permit the purchase or construction of a building, such purchase might properly be made.

I do not believe that this is such an emergency as is contemplated in Section 17 of the County Financial Control Act. (See opinion addressed to Hon. Frank Underwood, Russellville, 3rd Quarterly Report, page 208).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 20, 1936.

Hon. John R. Matthews,
Clerk of Circuit Court,
Montgomery County,
Montgomery, Alabama.

Juror not entitled to mileage from point outside of county.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of November 19, 1936, in which you request my opinion as follows:

"A juror summoned for jury duty in Montgomery County to serve on petit jury was working temporarily in Atmore, Alabama. The summons was forwarded from his home to Atmore and the juror attended. He now asks that he be paid mileage from Atmore instead of from his Montgomery residence. Please advise me which should be done in reference to this matter."

I am of the opinion that the juror should draw mileage from his Montgomery residence and return and not from his present location in Atmore.

While Section 2760 of the 1923 Code provides that a juror shall be paid five cents per mile for each mile going to and returning from court, nevertheless, this Section must be construed in connection with the provision that

only names of persons living within the county where court is to be held are to be placed in the jury box.

The juror about whom you inquire is a resident of Montgomery County and the fact that he was temporarily absent from this county does not entitle him to mileage from and to the place where he happened to be at the time court was held.

I am therefore of the opinion that mileage should be paid from and to his Montgomery County residence.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 23, 1936.

Hon. L. O. Sanford,
Treasurer,
Tallapoosa County,
Dadeville, Alabama.

Method of payment of claims against the Fine and Forfeiture Fund of Tallapoosa County under Local Act No. 171, H. 564, approved July 8, 1935 (Local Acts 1935, page 89):

The word "issued" as used in Section 3 of said act refers to the date on which the certificate evidencing a claim against the fund is executed and not the date on which the case out of which the claim arose was disposed of.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge receipt of your letter of November 5, 1936, in which you request a reconsideration of an opinion rendered by this office under date of August 31, 1936.

The opinion referred to by you was written in response to an inquiry quoted as follows:

"Relative to Act No. 171 (H. 564-Bulger) approved on July 8, 1935, I will thank you to advise me if scrip covering cases tried or disposed of prior to the date of the approval of this act but not written up until after the date of the approval of this Act, is issued prior to the passage of this act or subsequent to the passage of the same.

"In short, I am referring to Section 3 of said Local Act for Tallapoosa County and desire to know whether State Witness Certificates and officers scrip are considered issued on the disposal of the case or when written up at a later date."

I understand the said Local Act to operate as follows: \$2,500.00 is appropriated each year to take care of Fine and Forfeiture claims "issued" after the passage of the said act and \$1,000.00 is appropriated each year to

take care of the Fine and Forfeiture claims "issued" prior to the passage of said act.

The \$1,000.00 appropriated for the payment of claims "issued" prior to the passage of the act is to be disbursed in the following manner: A period of ninety days after the approval date of the act was given in which the claims "issued" prior to the passage of the act could be reregistered. All claims which were reregistered within the said ninety days period have preference over those claims which were not reregistered. However, the date of reregistration within the said ninety day period does not govern as to the date of payment but all claims which were registered during the said ninety day period are payable in accordance with the date of original registration. All other such claims which were executed prior to the passage of the act and which were not reregistered within the ninety day period are payable only after all reregistered claims are paid.

The claims which were "issued" subsequent to the date of passage of the act are payable in the order of their priority of registration. The Treasurer, of course, was not authorized to make any payments in either case until the ninety day period had expired.

As I understand your original inquiry, the point which you desire this office to answer is this: Are claims arising out of a case which was tried and disposed of prior to the passage of the act, charges against the \$1,000.00 fund and, therefore, subject to reregistration even though the certificate evidencing that claim was executed subsequent to the passage of this act? Or, expressed another way, does the word "issued" as used in Section 3 of said Act refer to the date of the disposal of the case or the date on which the certificate evidencing the claim is "issued"? I am of the opinion that the word "issued" as used in said Section 3 refers to the date on which the certificate evidencing the claim was executed and not to the date on which the case was disposed of. It, therefore, follows that claims arising out of a case which was disposed of prior to the passage of the Act, the certificate evidencing this claim having been executed subsequent to the passage of the act, are payable out of the \$2,500.00 fund and, therefore, payable in the order of their registration and need not be registered within the ninety day period.

My opinion of August 31, 1936, holding to the contrary is hereby withdrawn.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

November 25, 1936.

Hon. J. Foy Laseter,
Judge of Probate,
Barbour County,
Eufaula, Alabama.

Counties—Board of Revenue may pay for toilet paper and paper towels used by offices in courthouse.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have letter of Messrs. McDowell & McDowell of November 5, 1936, requesting opinion on your behalf as follows:

"Is an account against the County of Barbour for \$6.00, for one case of toilet paper an account that the Board of Revenue can pay?"

In this connection, we also beg to request an opinion as to whether or not an account for tissue paper towels used by all the officers in the Court House, can be approved and paid for by the Board of Revenue."

Answering your first question, I advise you that the Barbour County Board of Revenue may properly pay for the case of toilet paper, provided of course, that such paper is furnished for the various offices of the County.

It is further my opinion that the Board of Revenue may properly approve an account for tissue paper towels used by the officers in the courthouse.

This office has heretofore held, in an opinion to Mrs. Mary M. Crook, Clerk, Board of Revenue, Evergreen, Conecuh County, Alabama, under date of April 12, 1935, that the Court of County Commissioners was authorized, under sub-section 2 of Section 6755, Code of Alabama of 1923, to furnish individual drinking cups for the various offices of the County. Sub-section 2 is as follows:

"It shall be the duty of the Court to provide a janitor for the courthouse and to see that the janitor keeps clean and in a sanitary condition all the court rooms, corridors, halls and offices in the courthouse of their respective counties."

I am of the opinion that the reasoning used in the opinion referred to above is equally applicable here. It was there said that the words "keeping clean and sanitary" authorized the furnishing of the drinking cups. It is my opinion that the same words would authorize the supplying of both the toilet paper and paper towels to the various county offices.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 1, 1936.

Hon. Forrest Castleberry, Member,
House of Representatives,
Conecuh County,
Evergreen, Alabama.

Proviso in General Act excepting Local Act from its provisions, will be accorded effect.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of March 26th, in which you request my opinion as follows:

"Please render me an official opinion as to whether the proviso contained in Schedule 156.9 of the Revenue Act of 1935 that,

"Provided, however, that in the use and expenditure of that portion of the funds accruing hereunder to Conecuh County, the Board of Revenue of Conecuh County shall have authority to apply 40% of such funds to the purposes provided in Act approved June 16, 1931 (Local Acts 1931, page 128), this being a new levy of the same tax referred to in said local act and it not being the intention to repeal said local act, any provision herein contained to the contrary notwithstanding,"

"may be lawfully given effect, that is, whether a county may be specifically exempted from the provisions of a general act by mentioning said county by name. In other words, was the Act approved June 16, 1931 (Local Acts 1932, page 128) repealed by Schedule 156.9 or does the proviso above quoted have the effect of taking this local Act out from within the provisions of Schedule 156.9?"

I am of the opinion that the proviso mentioned may be given effect. The general rule, as stated in Corpus Juris, as follows:

"Proviso in a general law that it shall not repeal or affect the provisions of any special law relating to the same subject in any county, township, or borough in the state will be accorded effect."

59 Corpus Juris, 934, part of Par. 536.

In the case of *Blakey vs. City Council of Montgomery* (144 Ala. 481), the Alabama Supreme Court held that a general act relating to municipalities which specifically exempted Sheffield and Tuscumbia from its operation, is not rendered a Local Act and that the proviso should be given effect. The holding in this case was on the theory that these two cities were already exempted.

By similar reasoning the fact that a Local Act already existed contrary to the General Act and the further fact that generally both the Local and General Act are given effect wherever possible (59 Corpus Juris, 931), I am of the opinion that the Act in question is valid and that the proviso will be given effect.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 1, 1936.

Hon. Fleetwood Rice,
Judge of Probate,
Tuscaloosa County,
Tuscaloosa, Alabama.

Charter fee—Under facts stated J. T. Horne Veneer Company should pay fee on the increased amount of capital stock as provided by Section 6969 of the 1923 Code of Alabama.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of October 26, 1936, in which you state as follows:

"J. T. Horne Veneer Company, Incorporated, which is a corporation, was organized in Tuscaloosa County on January 1, 1914, with a capital stock of \$25,000. On February 28, 1919, its capital stock was increased to \$100,000. On April 15, 1932, its capital stock was reduced to \$25,000. On September 28, 1935, its capital stock was reduced to \$15,000.

"On September 30, 1936, its capital stock was increased to \$30,000.

"You will note that this corporation had previously had a capital stock of \$100,000, and it paid the capital stock tax on \$100,000 when its capital was increased to \$100,000."

You request my opinion as follows:

"Please advise me whether any capital stock tax should be collected for the present increase from \$15,000 to \$30,000 in capital stock."

In my opinion you should collect the fee on the increased amount of capital stock as provided by Section 6969 of the 1923 Code of Alabama which will amount to \$15.00 although the corporation has previously paid fees on its \$100,000 capital stock.

Section 6969 of the 1923 Code of Alabama provides as follows:

"6969 CHARTER FEES, AMOUNTS AND HOW PAID.—At the time the certificate is filed in the office of the judge of probate the incorporators shall pay to the probate judge for the use of the state, one dollar for every one thousand dollars of the proposed capital stock, but in no case less than five dollars."

Section 6972 of the 1923 Code of Alabama provides, in part, as follows:

"Before the report of the proceedings of the stockholders increasing the capital stock of the corporation shall be filed, the corporation shall pay to the judge of probate, to be reported to the state auditor, and paid into the state treasury as above provided, the fees as above prescribed upon the increase of such capital stock, * * *."

From studying the sections, supra, it is my opinion that it was the intention of the Legislature to require a corporation to pay a fee each time it increased its capital stock, and that the fee should be computed by taking the amount of capital stock before it is increased and subtracting that sum from the total amount of the capital stock which includes the increased amount.

The fundamental rule of construction is to ascertain and give effect to the intention of the legislature as expressed in the statute. *Street v. Cloe*, 207 Ala. 631, 93. So. 591.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 2, 1936.

Hon. Ed Pettus,
Secretary-Treasurer,
State Licensing Board for General Contractors,
Bell Building,
Montgomery, Alabama.

Section 7 of Act No. 297, S. B. 112, approved September 2, 1935, (General Acts 1935, pp. 721, 723) should be construed so as to permit the purposes of the entire Act to be realized.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge receipt of your letter of recent date wherein you request a reconsideration of a part of an opinion rendered by this office on March 31, 1936.

In the opinion of March 31, 1936, addressed to you, I held in syllabus 2 thereof that the State Licensing Board "may retain not exceeding ten (10%) per cent of past year's operating expense as emergency fund."

After a careful consideration of the entire Act, the purpose of which it was created and the means by which it functions, I have come to the conclusion that that part of my opinion of March 31, 1936, above referred to, would in effect render the State Licensing Board ineffective for two or three months of each year.

The said Board receives its revenue solely from fees paid to it by parties originally applying for licenses and from parties applying for renewals. The fee for an original license is fifty dollars, which must accompany the application. Renewal fees amount to twenty-five dollars and may be paid at any time during the month of January. After the first year of existence of such a Board the revenue to be received from original permits will, of course, be nominal. The only substantial revenue to be expected must come from the twenty-five dollar fee for renewal, which is not even due until January.

Therefore, if the Board must cover into the General Fund at any date practically all of its revenue on hand it will be unable to function for several months thereafter, and in fact not until it receives a substantial sum from the receipt of revenue paid in for renewal permits. The date when these funds will be received is entirely problematical.

I do not think that the Board should be crippled in such a manner, and, in view of the fact that Section 7 of said Act is to some extent ambiguous, I am withdrawing that part of my opinion of March 31, 1936, wherein I held that the Board could not retain in excess of ten (10%) of the past year's operating expense.

I am of the opinion now that the Board is entitled to retain such sums as in the discretion of the Board it deems necessary to enable it to function properly and perform the duties required of it under the terms of the Act in a competent and efficient manner.

The words "at least" have been interpreted to mean "not less than." **Hoffman v. Clark County**, 20 N. W. 376; **Polk v. Lane**, 12 Tenn. 36; **Miller v. State**, 94 So. (Miss.) 706.

The cases above cited are in support of the position here taken and opposed to the view expressed in the opinion of March 31, 1936.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1936.

Hon. A. B. McDowell,
Tax Assessor,
Geneva, Alabama.

The provisions of Section 201 of the 1935 Revenue Acts 1935, page 348, are optional with municipal corporations, and in order to require the tax assessor and tax collector to assess and collect municipal taxes in the manner therein contemplated, such municipal corporations must adopt and certify to the tax assessor the appropriate ordinance therein indicated, at such time as will enable the tax assessor to assess and value property for city taxation, at the time and in the manner provided for assessment of state and county taxes.

Opinion by the Attorney General.

Dear Sir:

I wish to acknowledge receipt of your letter of August 18th, which is as follows:

"The Towns of Geneva County are figuring on having the Tax Assessor and Tax Collector, assess and collect the City Taxes, which I understand is legal and compulsory, but the Towns have not as yet served me with any notice that they have passed such ordinance, should they pass such an ordinance how can they force me to assess the 1936 tax? By reference you will see that I have made my abstract to the State on August 15th.

"Please advise me at an early date as the time will be short for me to make these assessments if I have to make same for 1936.

"Who's duty will it be to give the description of this property, as some items are listed as Geneva when in fact they are just outside the corporate limits."

Section 201 of the Revenue Act, Acts 1935, page 348, provides as follows:

"Any municipal corporation in this State, may, by ordinance duly adopted, provide for the assessment, equalization and collection of taxes due such municipality, by the officers and boards provided in this Chapter, and all the machinery herein provided for the assessment, equalization and collection of State and county taxes, the enforcement of such collection, the sale of property for the collection and the redemption from such sales, shall be applicable to the assessment and collection of such municipal taxes, the sale of property for the collection of such municipal taxes and the redemption from such sale, and the assessor and collector shall receive such compensation as may be fixed by the govern-

ing body of such municipality, not to exceed one-half of one per cent for assessing and one-half of one per cent for collecting."

It will be observed that the acceptance of this mode of assessing and collecting taxes is optional with the several municipalities, and until the appropriate ordinance indicated has been adopted by the governing body of the municipality and certified to the tax assessor and tax collector there is no duty on such officers to assess and collect municipal taxes. See opinion to Mrs. L. E. Christian, 1930-32, Biennial Report of Attorney General, page 700.

Since this optional provision provides that all the machinery provided for the assessment, equalization and collection of state and county taxes, etc., shall be applicable to the assessment and collection of municipal taxes, I am of the opinion that, in order to place the mandatory duty on the tax assessor to assess, value and equalize property for city taxation, the city authorities must certify to him the appropriate resolution contemplated by this section at such time as to enable him to perform these duties at the same time and in the same manner that he does with regard to state, county and other taxes.

I am therefore of the opinion that, if the municipalities of Geneva County have in fact levied taxes to become due October 1, 1936, they cannot at this late date require the tax assessor and tax collector to assess and collect these taxes under the provisions of Section 201 of the 1935 Revenue Act.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 3, 1936.

Hon. Forrest Castleberry,
Representative from Conecuh County,
Capitol.

Act No. 110, S.B. 16, approved April 14, 1936, (Local Act 1936, Extra Session) is unconstitutional and void, being in violation of Section 105 and Subsection 24 of Section 104 of the Constitution of Alabama.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

On April 25, 1936, at your request, I rendered an official opinion as follows:

"I wish to acknowledge receipt of your letter of April 14, 1936, in which you request my opinion as follows:

"Please advise me if Senate Bill No. 16, approved April 14, 1936 (Special Session) is constitutional.

"In my opinion Act No. 110, S. B. 16, approved April 14, 1936 (Local Acts 1936, Extra Session) is unconstitutional and void in that it violates Section 105 of the 1901 Constitution of Alabama, which is as follows:

"105. No special, private, or local law, except a law fixing the time of holding courts, shall be enacted in any case which is provided for

by a general law, or when the relief sought can be given by any court of this state; and the courts, and not the legislature, shall judge as to whether the matter of said law is provided for by a general law, and as to whether the relief sought can be given by any court; nor shall the Legislature indirectly enact any such special, private or local law by the partial repeal of a general law.'

"Act No. 110, which is a Local Act, provides Twenty-Five Dollars per month per county, to be paid to the Circuit Judge in lieu of all expenses now allowed by law to said Judge while in his own Circuit, and Act No. 296, S. B. 25, approved November 5, 1932 (General Acts 1932, Extra Session, p. 301), provides that Circuit Judges shall each receive the sum of One Hundred Dollars per annum for each county of their circuit over and above one, said allowance to be for their reasonable expenses, while in attendance on court outside of their home county. Act No. 110 increases the expense allowance from One Hundred Dollars per year per county to Three Hundred Dollars per year per county.

"I wish to call your attention to the case of Acuff, County Treasurer, v. Weaver, 86 So. 167, 17 Ala. App. 532, (containing response by the Supreme Court of Alabama to inquiry by the Court of Appeals). In this case the compensation of the Judge of the County Court of Shelby County, under the provisions of the general law, was Four Hundred and Fifty Dollars per annum, while under the Local Act the compensation was fixed at Twelve Hundred Dollars per annum. The Court held that the subject matter of the two Acts was the same, and the question of compensation having been provided for by the general law, the Local Act contravened Section 105 of the Constitution and was void.

"In the case of Evans v. Long, 149 So. 837, 227 Ala. 335, the Supreme Court of Alabama held that the Local Act raising the salary of the chief deputy sheriff of Walker County violated Section 105 of the Constitution, as the general law fixed the compensation for the chief deputy sheriff.

"See also the following cases in which Section 105 of the Constitution is construed:

"State v. Bowles, 116 So. 662, 217 Ala. 458; Dunn v. Dean, 71 So. 709, 196 Ala. 486; City of Montgomery v. Reese, 45 So. 116, 149 Ala. 190.

"The expense allowances for Circuit Judges are specifically provided for by general legislation and, therefore, in my opinion, the Local Act which increases the allowances for the Judge of a particular Judicial Circuit is unconstitutional and void in that it violates Section 105 of the 1901 Constitution of Alabama."

In view of exceptions taken to the foregoing opinion, and in view of briefs filed on behalf of the Judge of the Twenty-first Judicial Circuit in support of the exceptions so taken, it has been deemed proper to extend the former opinion.

In the briefs filed it is urged that the conclusion of the foregoing opinion that the Local Act, *supra*, is violative of Section 105 of the Constitution, is laid in error, for the reason that the subject matter of (local) Act No. 110 is different from that of General Acts, 1932, Extra Session, page 301, inasmuch as the 1932 Act provided for the expense allowance to be paid from State funds, whereas, the 1936 Local Act (No. 110) provides that the several

county governing bodies of the counties of the Circuit may pay the expense allowance to the Circuit Judge from **County** funds.

Apparently the Legislature considered the "expense allowance", and not the source thereof, the subject matter of the legislation, as is evidenced by Section 2, thereof, which provides:

"Section 2. That said sum of Twenty-five dollars (\$25.00) per month per county, when authorized by the governing bodies of said counties, or either of them, shall be paid monthly out of the County Treasury of said county or counties, so authorizing such payment as herein provided, upon the warrant of the said Circuit Judge, such warrant to be paid as other expenses of the Court are paid; the said sums, when so paid by each of said counties, shall be in lieu of all other expenses now allowed by law to be paid said Circuit Judge while in his own Circuit."

The above opinion represents the studied judgment of this office upon the question, and is adhered to in every respect.

However, conceding (only) for the purpose of argument that the conclusion of the foregoing opinion may be seriously questioned, nevertheless, Act No. 110, *supra*, is invalid.

Subsection 24 of Section 104 of the Constitution provides:

"The Legislature shall not pass any special, private or local law in any of the following cases:

"(24 creating, increasing, or decreasing fees, percentages, or allowances of public officers—"

Admittedly, Act No. 110 is not a **general** law. Const. Sec. 110—Notice of intention to apply therefor was advertised in each of the counties to which it was intended to be applicable, and proof of publication was spread upon the Journals of the two Houses of the Legislature, in order to comply with Section 106 of the Constitution.

And it cannot seriously be questioned that the "expense allowance" dealt with in Act No. 110 is an "allowance of a public officer" within the meaning of the subsection, *supra*. Of. *Stone v. State Ex. Rel. Holcombe*, 197, Ala. 293.

It is ingeniously argued in the briefs filed on behalf of the Circuit Judge in support of the validity of the Act, that, inasmuch as the Local Act, *supra*, merely authorizes the several county governing bodies to create the allowance and pay the same to the Circuit Judge, the Act itself does not **create** such allowance, within the meaning of Subsection, *supra*. This insistence falls of its own weight.

Such a construction would, in effect, authorize the Legislature, by indirection, to do a thing which the Constitution expressly forbids. It would, authorize the Legislature, by local Act, to delegate to the county governing bodies power to create an allowance to a public officer, which power the Constitution has denied to the lawmaking body itself.

Under such a construction the Constitution would be, not the cardinal law of the land as universally has been declared by the Courts of last resort, but a mere hazard of obstacle to be evaded if, as and when the ingenuity or the cupidity of men might suggest it.

What the Legislature cannot do directly, it cannot do by indirection. *Montgomery v. State*, 163, So. 365. *Sanders et al v. Cabaniss*, 43 Ala. 173.

In addition, Subsection 24 of Section 104 of the Constitution also withdraws from the Legislature the power to **decrease**, by local Act, any such allowance of public officers. By Section 2 of the Local Act, quoted *supra*, it is provided that when the sum of \$25.00 per month is authorized by the county governing bodies to be paid monthly out of the county treasuries of the said counties, to the Circuit Judge, the same "shall be in lieu of all other expenses now allowed by law to be paid said Circuit Judge while in his own Circuit". Even if it be conceded that the allowance authorized by (local) Act No. 110 is wholly distinct from that authorized by General Acts 1932, p. 301, this is certainly a **decrease** of the allowance to the Circuit Judge authorized by the latter Act; and the decrease is directly effected by the Legislature itself.

I have kept in mind the oft announced principle laid down by the Courts that, to be in a state of doubt as to the Constitutional validity of an Act of the Legislature, is to hold the same valid. However, in my opinion, Act No. 110, *supra*, is so patently invalid that the duty to so declare it is clear and plain.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1936.

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Filing tax—

Under facts stated Southwall Corporation required to pay filing tax on deed as provided by Schedule 45 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of recent date in which you state:

"The Mortgage-Bond Company of New York, a foreign corporation qualified to do business in Alabama, was the owner of a mortgage covering certain real estate located in the City and County of Montgomery, Alabama. Among the employees of The Mortgage-Bond Company of New York was one Joseph A. West, who resides at Westfield, New Jersey. The mortgage in question becoming in default, The Mortgage-Bond Company of New York transferred the same to Joseph A. West for its benefit, and said mortgage was subsequently foreclosed by Mr. West. At the foreclosure sale Joseph A. West became the purchaser of the property at and for the full amount of the mortgage indebtedness and a proper foreclosure deed conveying title to the property in question to him has been recorded in the Probate Office of Montgomery County. I am informed that The Mortgage-Bond Company of New York used this method

of procedure in all cases where foreclosures became necessary, in order that real estate titles might be vested, for the purpose of convenience and for its benefit, in their employee Joseph A. West. Subsequently, The Mortgage-Bond Company of New York organized a subsidiary corporation, Southwall Corporation for the purpose only of relieving Joseph A. West of the obligation of executing warranty deeds to purchasers of foreclosed properties. Southwall Corporation now presents for recordation a deed executed to it by Joseph A. West, which said deed is in usual form for statutory warranty deed. The only consideration expressed in the deed is the nominal one of \$100.00 and there is no other consideration except to perfect the title according to the above plan.

"It is contended by Southwall Corporation that no state deed tax should be required to be paid upon recordation of this deed, for the reason that there has been no real consideration passed between Southwall Corporation and Joseph A. West. It is stated that both Mr. West and Southwall Corporation have been acting in a representative capacity for The Mortgage-Bond Company of New York and that nothing more than a nominal consideration has ever been passed between the parties in connection with the foregoing facts."

You request my opinion as follows:

"I would like to have your opinion upon the question as to whether Southwall Corporation should be required to pay a state deed tax upon a true valuation of the property conveyed by the deed from Joseph A. West to Southwall Corporation."

In my opinion, the Southwall Corporation should be required to pay a state deed tax based on the true valuation of the property conveyed to it by Joseph A. West.

This office has heretofore ruled that the deed filing tax is measured by the value of the property conveyed. Quarterly Report of Attorney General, Vol. I, page 66.

I refer you to Schedule 45 of the 1935 Revenue Act which provides, in part, as follows:

"No deed, bill of sale or other instrument of like character which conveys any real or personal property within this State, or which conveys an interest in any such property, except the transfer of mortgages on real or personal property within this State upon which the mortgage tax has been paid, deeds or instruments executed for a nominal consideration for the purpose of perfecting the title to real estate, and deeds and other instruments or conveyances, executed prior to October 1, 1923, shall not be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record, to-wit: Upon all such instruments which are executed to convey real or personal property situated in this State of the value of five hundred dollars (\$500.00) or less there shall be paid the sum of fifty cents (\$.50), and upon all such instruments executed to convey real or personal property situated in this State of more than five hundred dollars (\$500.00) in value there shall be paid the sum of fifty cents (\$.50) for each five hundred dollars (\$500.00) or fraction thereof in value of property conveyed by such instrument. * * *

From the facts as stated in your request it is my opinion that the conveyance to the Southwall Corporation is not made for the purpose of perfecting the title so as to come within the exception, *supra*, but for the expressed purpose of the Southwall Corporation acquiring title to the property.

I quote from the opinion of Mr. Justice Gardner in the recent case of **Hawkins, Probate Judge v. Pure Oil Co.** (Alabama Supplement) 169 So. 307 (in advance sheet) as follows:

"If, of course, the deed is for the purpose of acquiring the title, even though on a nominal consideration, the exception would not be applicable, as illustrated in the opinion of the Attorney General referring to a deed executed by an executor to carry out the will of the testator, and by which deed the legal title passes to the devisee. * * * The purpose of the exception was plain. It is a matter of general knowledge that in abstracting titles to property, and in making sales, and settling estates numerous defects appear which should be corrected on the record, and the owner, though having possession and title, is required to perfect the record title, and deeds are oftentimes required for this purpose. They are based upon a mere nominal consideration, and usually serve to correct a technical error or defect in the title, or perhaps some matter of description."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1936.

Hon. Henry S. Long,
Chairman, State Tax Commission,
Capitol.

Attention Hon. Harry Simon, Chief Clerk, License Department.

Licenses—Schedule 74 of 1935 Revenue Act, Act No. 194, General Acts, 1935, page 256, approved July 10, 1935, construed—

1. A person keeping a public inn or lodging house is engaged in the business of keeping a hotel, within the meaning of Schedule 74, *supra*, if he has in such public inn or lodging house as many as five bedrooms "where transient guests are lodged for pay."

2. A person engaged in the business of keeping a hotel must pay a license according to the graduated scale contained in Schedule 74, *supra*, based on the total number of rooms in the hotel where transient guests are lodged for pay".

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of May 6, 1936, which follows:

"Your interpretation of Schedule 74, Section 348, Revenue Acts of 1935, is requested under the following statement of facts:

"A public inn, which is classified as a hotel by reason of the fact that five or more rooms are occupied by transients, "transients" being defined as persons who are lodged for pay for less than one week at such hotel; said hotel has a total of twenty rooms but contends that only five rooms are occupied by transients, the remainder being occupied by guests who rent said rooms for more than a week, and in many cases rent on a monthly basis.

"Would such hotel be required to pay a license based on five rooms or would it be required to pay a license based on twenty rooms?

"As stated above, a lodging house or inn must have at least five rooms open for transients before it would come under the provisions of Schedule 74. The license on this Schedule is levied on the number of rooms in the hotel regardless of whether or not they are occupied by transients as defined in said Schedule, or whether they are occupied by persons who stay longer than a week. "Transient guests" modifies "house" and not "rooms."

"While you have made former ruling in construing this Schedule, an exemption of all rooms not occupied by transient guests would open the way for unlimited evasions of this Schedule, as well as much controversy. Would you not construe the language of this Schedule as implication of the intention of the legislature to base the license upon the number of rooms open to guests for pay, regardless of the duration of their stay?

"In defining a hotel, did not the legislature by implication, though not clearly stated, intend first to define what constitutes a hotel, and after such business qualifies as a hotel by the occupancy of at least five rooms by transient guests, become subject to the payment of a license based on the **total** number of rooms in said hotel?

"My request for an opinion is rather argumentative, which is accounted for by my intense anxiety over the proper interpretation by you of this law, for which I most humbly ask your indulgence."

In answer to your letter I shall construe Schedule 74 of the 1935 Revenue Act, Act No. 194, General Acts 1935, page 256, approved July 10, 1935, which is the schedule levying a license on hotels.

Schedule 74, *supra*, reads as follows:

"Schedule 74. Each person keeping a public inn or lodging house of five or more bed rooms where transient guests are lodged for pay shall be deemed for the purposes of this Act to be engaged in the business of keeping a hotel. A transient guest is one who puts up for less than one week at such hotel, but such a house is no less a hotel because some of the guests put up for longer periods than one week. Every person keeping a hotel as defined in this section shall pay an annual license tax as follows: Hotels with five rooms and not over fifteen rooms, fifty cents for each room; hotels with over fifteen and less than fifty rooms one dollar (\$1.00) for each room; hotels with fifty rooms and less than one hundred rooms, one dollar and fifty cents (\$1.50) for each room; hotels with one hundred rooms and over, two dollars (\$2.00) for each room. If meals, food or refreshments are served to the general public and charged for, then the additional license required to be paid by restaur-

rants, cafes, lunch counters and public eating houses shall be paid. Provided that where cottages or annex are operated in connection with, or rented by, such hotel the above schedule shall apply to the total of the rooms in the hotel and the cottages and annex."

The first question that presents itself is when does a public inn or lodging house become a hotel within the meaning of the schedule. The schedule plainly says that a public inn or lodging house becomes a hotel when it contains "five or more bed rooms where transient guests are lodged for pay." This much of the schedule is clear. It is my opinion, that a public inn or lodging house becomes a hotel, within the meaning of Schedule 74, supra, when it contains as many as five rooms in which "transient guests are lodged for pay."

The schedule defines a "transient guest" as "one who puts up for less than one week at such hotel". Therefore, we do not need to discuss what is meant by the term "transient guests" as used therein.

Each person keeping a hotel as defined in the schedule is liable for a license based upon a graduated scale, according to the number as set out in the schedule.

The next question that confronts us is whether the term "rooms" as used in the graduated scale of the schedule means only the number of rooms in which "transient guests are lodged for pay" or whether it means the total number of rooms in the hotel. Throughout the graduated scale the term "rooms" is used without the modifying clause "where transient guests are lodged for pay." Had the Legislature intended for the term "rooms" as used in the graduated scale to mean only "rooms" "where transient guests are lodged for pay" it is my opinion that it would have so stated by using the modifying clause, just as it did when it used the term in defining a hotel in the first part of the schedule. Having failed to use this modifying clause in the graduated scale, it is my opinion that the Legislature did not mean for the scale to be based only on the number of rooms "where transient guests are lodged for pay" but that it intended for it to be based on the total number of rooms in the hotel. This conclusion is strengthened by the last sentence of the schedule which reads:

"Provided that where cottages or annex are operated in connection with, or rented by, such hotel the above schedule shall apply to the total of the rooms in the hotel and the cottages and annex."

You will note that this sentence plainly deals with the **total** number of rooms and that nothing therein can be construed to mean **only** rooms "where transient guests are lodged for pay."

Therefore, it is my opinion, that when a person becomes engaged in the business of keeping a hotel by virtue of the fact that his public inn or lodging house contains as many as "five bed rooms where transient guests are lodged for pay", then he must pay a license on such hotel according to the graduated scale contained in Schedule 74, supra, based on the total number of rooms in the hotel and not based only on the number of rooms therein "where transient guests are lodged for pay".

The following opinions have been rendered by this office dealing with this general subject:

State Tax Commission, July 31, 1920, found in Report of Attorney General, 1918-20, at page 605;

State Tax Commission, September 5, 1930, office edition, Book 19, page 86;

Judge of Probate, Dallas County, September 10, 1930, office edition, Book 19, page 129;

Hon. R. E. Williams, Judge of Probate, Marshall County, September 4, 1935, office edition, Book 16, page 95;

Hon. Saxon P. Joyner, Judge of Probate, Houston County, October 17, 1935, Quarterly Report, Attorney General, October-December, 1935, page 86.

Any and all statements contained in these opinions which conflict with the views expressed in this opinion are hereby modified to conform with the views expressed herein.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1936.

Hon. Bibb Graves,
Governor of Alabama,
Capitol.

Statutes authorizing State Departments and political subdivisions of the State to use public funds to pay premiums for insurance covering injuries sustained by employees in line of duty, constitutional.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of October 20, 1936, together with an enclosed letter written to you by Mr. R. W. Hudgens, Regional Director of the Resettlement Administration. I note the questions propounded in Mr. Hudgen's letter, and consider them in this opinion as having been submitted by you.

The questions are as follows:

"(1) May the public funds of the State and political subdivisions thereof and other local governing or public administrative bodies be used for the payment of premiums or workmen's compensation insurance or other equivalent form of insurance covering signatories of voluntary work agreements?

"(2) Are the State and its political subdivisions and other local authorities authorized by law to assume liability for injuries sustained by assigned voluntary work agreement signatories?

"(3) Will assigned voluntary work agreement signatories be otherwise similarly protected by such insurance by the operating of the provisions of any other applicable State statute?"

In answer to your first inquiry, it is my opinion that public funds of the State of Alabama and its political subdivisions may be expended for the payment of premiums on Workmen's Compensation Insurance, or other equivalent form of insurance, when the State or its political subdivisions have been authorized to do so by legislative enactment.

This office in an opinion rendered on December 22, 1931, to the Chief Examiner of Accounts, held constitutional that part of Section 6 of Act No. 347, H. 391, approved August 23, 1927; 1928 Code of Alabama, Section 1397 (7) authorizing the Highway Commission, with the approval of the Governor, to provide compensation insurance for its employees, accidentally killed or injured, while actually engaged in performance of certain duties. A copy of the above mentioned opinion is herewith enclosed.

The Supreme Court of this State has not passed on this particular question but has laid down the principle that public funds can be expended to compensate a person injured while working for the State, there being a moral if not a legal obligation. — *State v. Clements*, 220 Ala. 515, 126 So. 162.

Several courts of last resort of other States have passed on this question and the decisions greatly preponderate in favor of the constitutionality of such legislation.

This office has previously held that the State of Alabama was not an "employer" within the meaning of that term as used in the Workmen's Compensation Act. — *Biennial Report of Attorney General, 1920-1922*, p. 61; *Biennial Report of Attorney General, 1926-1928*, p. 41.

The above mentioned opinions, of course, were limited to a construction of the Workmen's Compensation Act, and did not deal with any statute directly authorizing the State or the departments thereof to come within the provisions of said Compensation Act.

Under the provisions of Section 7543, Code of Alabama, 1923, counties, cities, towns, villages and school districts are specifically authorized to come within the operation of the Workmen's Compensation Act by complying with the provisions of that section. — *Biennial Report of Attorney General, 1930-1932*, p. 160.

An opinion of this office rendered on July 15, 1929, directed to the Probate Judge of Randolph County, holding to the contrary is hereby expressly overruled and withdrawn. — *Biennial Report of Attorney General, 1928-1930*, p. 541.

In answer to your second question, it is my opinion that the State of Alabama and its political subdivisions can only be liable for injuries sustained by employees in the manner above set out. Of course, the State of Alabama cannot be made a party defendant and it is a general rule that counties are not liable in tort actions.

In answer to question three, I wish to advise that in addition to the provisions of the highway law heretofore referred to, another department of the State has been authorized to provide insurance for compensation or benefit of persons injured or killed in the operation of the State Docks, viz., State Docks Commission, which is authorized to do so by Act No. 300, S. 126, approved November 12, 1932. (General Acts, 1932, p. 305).

Section 118 of Act No. 143, H. 63, approved April 22, 1936, pp. 105, 142 and 143, deals with compensation of members of the State Militia wounded, disabled or killed as a result of active military or naval service.

I am unaware of any other State Department which has been authorized to expend its funds either for compensation to persons injured in the service of the State, or for insurance premiums.

To summarize, I am of the opinion that insurance may be provided only by those departments which are specifically authorized by statute to provide such insurance and in such cases liability would depend entirely upon the contract made by the department.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 3, 1936.

Hon. J. F. Laseter,
Judge of Probate,
Barbour County,
Clayton, Alabama.

License—Person practicing profession of oculist, optometrist or optician must pay appropriate license levied by Schedule 100 of the 1935 Revenue Act in each city, town or other place in which he regularly engages in the practice of his profession.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of July 22, 1936, in which you make the following inquiries:

“When an optometrist has taken out a license under Schedule 100 of the 1935 Revenue Act does this license permit him to go from town to town and practice his profession or does he have to take out additional State license in each town in which he practices his profession?”

It is my opinion that a person practicing the profession of an oculist, optometrist, or optician must take out the appropriate license levied by Schedule 100 of the 1935 Revenue Act in each city, town or other place in which he regularly engages in the practice of his profession.

Schedule 100 of the 1935 Revenue Act reads:

“Each oculist, optometrist or optician practicing his profession: in cities or towns of over five thousand (5000) inhabitants shall pay an annual license of twenty-five dollars (\$25.00); in cities or towns of less than five thousand (5000) and more than one thousand (1000) inhabitants, ten dollars (\$10.00); in all other places whether incorporated or not five dollars (\$5.00); but no license shall be paid to the county. If such business is conducted as a firm or as a corporation in which more than one person is engaged each oculist, optometrist or optician so engaged shall pay the license as above stated, provided that the license imposed

by this Section shall not apply until such oculist, optometrist or optician shall have practiced his profession as long as two years."

and sub-section (a) of Section 350 of said Act reads:

"(a) Whenever a license is levied in this Act, there shall be collected both a State and County license for each place of business except as specifically otherwise provided."

(Of course, Schedule 100 provides that no county license shall be levied.)

In my opinion the above quoted provisions of the 1935 Revenue Act are very clear to the effect that a person practicing the profession of an oculist, optometrist or optician must pay the appropriate license levied by Schedule 100, supra, in each city, town or other place in which he regularly engages in the practice of his profession. The payment of the appropriate license levied by Schedule 100 in one place would not exempt such person from the payment of the appropriate license levied by this schedule for any other place or places in which he regularly engages in the practice of his profession. The amount of the license required in each place would be the amount set in the schedule for a place of that particular classification.

Of course, if such person only made an occasional trip into cities, towns, or other places other than the place where he had procured a license under Schedule 100, supra, and did not **regularly** engage in the practice of his profession in such cities, towns or other places he would not be liable for an additional license in such places.

The reasoning here used in arriving at this conclusion is in accord with the reasoning used in an opinion of this office to the State Tax Commission under date of August 18, 1931, found in Biennial Report, Attorney General, 1930-1932 at page 413, dealing with analogous situation.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 3, 1936.

Hon. J. G. Pinson,
Superintendent of Education,
Rockford, Alabama.

Members of County Board of Education are not required under the law to make bond.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 14, 1936, in which you request my opinion as follows:

"I am writing for information on the following points:

"Are members of County Board of Education required to make bond in accordance with an Act of the Legislature passed in 1933—General

Acts, pages 204-208? If so, in what amount should these bonds be made."

I have examined the Act you refer to and other statutes relating to this matter and it is my opinion that the members of the County Board of Education are not required to make bond.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 5, 1936.

Hon. Eugene B. Henry,
Commissioner of Licenses,
Birmingham, Alabama.

Practice of Law.—

1. A person not a regularly licensed attorney cannot become entitled as a matter of right to engage in the business of enforcing, settling, adjusting or compromising claims based upon contracts or policies of insurance between persons with neither of whom he is in privity in the relation of employer and employee in the usual sense by virtue merely of taking out and paying for a license under General Acts, 1935, page 442, Schedule 5.

2. Such statute, insofar as it might purport to grant any such right to other than a regularly licensed attorney at law would be unconstitutional as invasive of the powers of the Judicial Department.

3. A person who is not a regularly licensed attorney who engages in such action is subject to the penalties provided in General Acts, 1931, p. 606 and other appropriate preventive action by the Courts.

4. Such action in fact constituting the practice of law, a corporation, firm or other artificial creation cannot lawfully engage therein in any event.

Opinion by Attorney General Carmichael.

Dear Sir:

I wish to acknowledge receipt of your letter of June 2, 1936, which is as follows:

"There are several insurance adjusters doing business in this County. They are not regularly salaried employees of any insurance company but operate a business as an individual calling and are confined to the adjustment and settlement of insurance claims.

"Will you kindly advise me what license fee, if any, such adjusters and their employees would be liable for? The adjusters referred to have not been licensed or admitted to practice law.

"I invite your attention to Article 13, Chapter 1, Schedule 5, of the Revenue Bill of 1935. There, a license tax of \$25.00 is imposed upon 'each adjuster of fire, automobile, property damage, collision, liability or other losses.'

"I also invite your attention to the General Acts of 1931, page 606, which defines the practice of law and prescribes penalties for the unauthorized practice of law and for those who conspire with or aid and abet another person in the unauthorized practice of law.

"If a license tax of \$25.00 or any other license fee is collectible from such individual adjuster, a non-lawyer, would this give him the right to adjust and settle claims as referred to in the General Acts of 1931, page 606, Section 2, Subsection D?

"What rights, if any, would the collection of the proper license fee from an individual adjuster, not licensed to practice law, confer upon such person? And would the collection of such license fee relieve him or the companies who might aid or abet him, from the penalties prescribed by the Acts of 1931, page 606?"

I assume that by reference to the practice of "adjustment and settlement of insurance claims" you mean the offering of one's services for hire generally, either to insurance carriers or to the public for the purpose of defeating, adjusting, settling, compromising or collecting all or parts of claims based upon some contract or policy of insurance.

The essential questions raised by your inquiries are, first, whether such action constitutes the practice of law within the definitions laid down by the courts and the legislature, and second, if so, whether one who is not a regularly licensed attorney may become entitled to perform such acts upon payment of \$25.00 and procurement of the license provided by Acts 1935, page 442, Schedule 5.

The action to which you refer, as amplified above, undoubtedly comes within the legislative definition of what constitutes practicing law as set out in Section 2 (d) of Acts 1931, p. 606, which is as follows:

"Section 2. For the purposes of this act, the practice of law is defined as follows: Whoever * * * (d) as a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense; is practicing law".

The Act further provides penalties as follows:

"Section 3. Any person, firm or corporation who is not a regularly licensed attorney who does an act defined in this act to be an act of practicing law, is guilty of a misdemeanor, and on conviction must be punished as provided by law. And any person, firm or corporation who conspires with or aids and abets another person, firm or corporation in the commission of such misdemeanor must, on conviction, be punished as provided by law."

Our Supreme Court in *Berk v. State*, 142 So. 832, considered this particular provision of the 1931 Act, and held that the acts of the defendant in soliciting for collection a promissory note and in collecting the amount thereof from the unwilling maker for compensation constituted practicing law within the statutory definition and prohibition. After a comprehensive review of other pertinent decisions, the court upheld the entire validity of the Act in the following broad language:

"It is well settled that the act in question (Gen'l Acts 1931, p. 606) is a valid enactment under the police power, and offends neither the State nor Federal Constitutions; it is not usurpation of judicial power; does not deprive of liberty or property without due process; neither denies to citizens equal civil rights, nor grants special privileges and immunities; does not violate, impair or deny rights retained by the people and does not violate the Fourteenth Amendment to the Federal Constitution; as supplied to the facts of this case."

So, then, one who, as a vocation, enforces, secures, settles, adjusts or compromises claims based upon contracts or policies of insurance, between persons, with neither of whom he is in privity in the relation of employer and employee, in the usual sense, is engaged in the practice of law, and unless properly qualified and licensed so to do is subject to the pains and penalties set out in Acts 1931, page 606. It matters not that he is attempting to defeat or reduce such a claim, rather than to enforce or collect it. The acts are correlative and equally covered by the statute. Furthermore, such action in fact constitutes the practice of law, even apart from the statutory definition, under the rules of decision laid down by the courts. See the Berk Case, *supra*, and the decisions there cited and quoted; also *Boykin v. Hopkins*, 162 S. E. 796 (Ga.)

Next we pass to the question whether one who is not a regularly licensed attorney may become entitled to practice law in the manner inquired about merely by virtue of taking out and paying for a license under Schedule 5, Acts 1935, page 442, provides as follows:

"Schedule 5. Each adjuster of fire, automobile, property damage, collision, liability or other losses, Twenty-Five Dollars (\$25.00) to the State, but no license shall be paid to the County. If such business is conducted as a firm or as a corporation in which more than one person is engaged, each person so engaged shall pay the license provided herein. The license paid in one county shall not be required to be paid in any other county in the State. Provided that this license tax shall not apply to any local insurance agent who adjusts losses for the insurance company which he regularly represents."

This question involves principles fundamental in our constitutional jurisprudence and merits detailed consideration.

Under our form of constitutional democracy the essential powers of government are carefully divided into three branches, each of which is substantially independent of the others, exercising paramount authority within its primary sphere. Section 42 of our Constitution (1901) provides:

"Section 42. The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another."

Section 139 of our Constitution provides:

"Section 139. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, a supreme court, circuit courts, chancery courts, courts of probate, such courts of law and equity inferior to the supreme court, and to consist of not more than five members, as the

legislature from time to time may establish, and such persons as may be by law invested with powers of a judicial nature; but no court of general jurisdiction, at law or in equity, or both, shall hereafter be established in and for any one county having a population of less than twenty thousand, according to the next preceding federal census, and property assessed for taxation at a less valuation than three million five hundred thousand dollars."

The administration of justice is at once the duty and the power of the Judicial Department. The courts established under the mandate of the Constitution are the immediate and effective arms of the department in the administration of justice. Essential to the existence, the dignity and the proper performance of the functions of the courts thus created is the inherent authority over the conduct of the members of the bar. In *re* Burton, 246 Pac. 188, In *re* Ole Mosness 39 Wis. 509, 20 Am. Rep. 55; *Re* Applicants for License to Practice Law, 55 S. E. 636, 10 L. R. A., n. s. 288, Ex parte Steckler, 179 La. 410, State v. Hacher, 129 No. 271, 31 S. W. 889, In *re* Morse, 126 Atl. 550; *People v. Merchants Protective Corp.* 209 Pac. 363; *State v. Credit Mens Assn.*, 43 S. W. (2d) 918; 2 *Ruling Case Law* 946. They are officers of the court and amenable to its authority, both as to admission to the right to practice law and the exclusion therefrom. Ex parte Thompson 228 Ala. 113, 152 So. 229, In *re* Opinion of the Justices, 180 N. E. 725 (Mass.), 81 A. L. R. 1059; Ex parte Wall, 107 U. S. 265, 27 L. ed 552.

By virtue of this inherent power the courts exercise the right to declare what constitutes the practice of law, although the legislature may or may not have attempted to define it. *People v. Merchants Protective Corp.*, 209 Pac. 363 (Cal.); *Boykin v. Hopkins* 162 S. E. 796 (Ga.); *Re Eastern Idaho Loan etc. Co.*, 288 Pac. 157, 73 A. L. R. 1323; *People v. Peoples Bank*, 176 N. E. 901 (Ill.) *People v. Assn. of Real Estate Taxpayers*, 187 N. E. 823; *Eley v. Miller*, 34 N. E. 836 (Ind.); in *re* opinion of the Justices, 194 N. E. 313 (Mass.) *People v. Title Guarantee Co.*, 125 N. E. 666 (N. Y.); *Land Title Co. v. Dworken*, 193 N. E. 650 (Ohio).

Speaking of the practice of law and the qualifications imposed thereon, the Supreme Court of Massachusetts, in *Opinion of the Justices*, 194 N. E. 313, used the following apt language:

"It is open only to individuals proved to the satisfaction of the court to possess sufficient general knowledge and adequate special qualifications as to learning in the law and to be of good moral character. After one has been sanctioned in these respects, the oath as an attorney must be taken, whereby one becomes an officer of the court and subject to its discipline for violation of his obligations even to the extent of removal from his office. A dual trust is imposed on attorneys at law; they must act with all good fidelity both to the court and to their clients. They are bound by canons of ethics which have been the growth of long experience and which are enforced by the courts. * * * The relation of an attorney to his client is pre-eminently confidential. In addition to adequate learning, it demands on the part of the attorney individual allegiance, a conspicuous degree of faithfulness and disinterestedness, absolute integrity and utter renunciation of every personal advantage conflicting in any way directly or indirectly with the interest of his clients. Only a human being can conform to these exacting requirements. Artificial creations such as corporations or associations cannot meet these prerequisites."

This is not to say that the legislature is denied any right whatever to deal with the practice of law, for while the legislature may not interfere with or usurp the inherent judicial power, it may exercise its police power in aid of the courts. The practice of law, being affected with a public interest, the legislature may fix **minimum** requirements and forbid the admission of persons not possessing those requirements to practice, but it cannot determine the ultimate **maximum** qualifications and require the acceptance by the judiciary of those possessing them. In re Bailey, 248 Pac. 29; Brodenjack v. State Bar, 281 Pac. 1018, 66 A. L. R. 1507; Ex parte Garland, 4 Wall. 333; In re Cannon, 240 N. W. 441. See Berk v. State, 142 So. 832, cited above; People ex. rel. Chicago Bar Assn. v. Motorist Assn., 188 N. E. 827 (Ill.).

The matter is succinctly stated by the Supreme Judicial Court of Massachusetts in the opinion of the Justices, 194 N. E. 313, as follows:

"Valid permission to practice law cannot be given by the General Court (Legislature except subject to the requirements for admission to the bar established by the Judicial Department. * * * Legislation **forbidding** such practice of the law by corporations or associations or by individuals other than members of the bar, would be **within the competency** of the General Court. * * *

"It would not be within the competency of the General Court to enact legislation designed to permit such practice of law by corporations or associations or by individuals other than members of the Bar of the Commonwealth."

Adverting to the specific circumstances referred to, the action of such independent insurance adjusters, in compromising, adjusting and settling claims based upon insurance policies and contracts between persons with neither of whom he is in privity as employer and employee in the usual sense does in fact constitute the practice of law. It has been so held. Townsend v. State Bar of California, 291 Pac. 839; Shaw v. State Bar of California, 297 Pac. 532, Hightower v. Detroit Edison Co., 247 N. W. 97 (Mich.); Fitchett v. Taylor, 254 N. W. 910 (Minn.), 94 A. L. R. 356. Our own court in Berk v. State, 225 Ala. 324, recognized that the collection of accounts for hire, without institution of suit, was practicing law and that the legislature might exercise its police power in aid of the courts in preventing such practice by one not a licensed attorney.

It is too well settled to admit of argument that the practice of law comprehends much more than the appearance in court in litigated cases. Our own court in the Berk case, 225 Ala. 324, 142 So. 832, said,

"It is unnecessary to observe, a fact of common knowledge, that it has been the usual business of a lawyer, for the past one hundred years in this state, as shown by the decisions we have cited, to engage in office practice not necessitating representation in court, as well as in cases **needed in and about the collection and settlement of claims and demands.**"

To like effect is Boykin v. Hopkins, 162 S. E. 796 (Ga.).

The courts owe the duty, not only to actual litigants, but also to the people at large, each of whom is a potential litigant, to protect them not only from corrupt or unscrupulous attorneys but also from the activities of unauthorized and unqualified lay practitioners.

While our Supreme Court has not specifically enunciated all of the principles here set out, it has done so in part and has recognized the essential philosophy of government underlying them. *Berk v. State*, supra, *Ex parte Thompson*, 228, Ala. 113, 152 So. 229; *In re Fite*, 228 Ala. 5, 154 So. 119.

In view of the foregoing I am persuaded and hold: First, that a person, not a regularly licensed attorney, cannot become entitled as a matter of right to engage in the business of enforcing, settling, adjusting or compromising claims based upon contracts or policies of insurance between persons with neither of whom he is in privity in the relation of employer and employee in the usual sense by virtue merely of taking out and paying for a license under Schedule 5 of General Acts 1935, p. 442; Second, that such statute, insofar as it might purport to grant any such right to other than a regularly licensed attorney at law would be unconstitutional as invasive of the powers of the Judicial Department; third, that a person who is not a regularly licensed attorney who engages in such action is subject to the penalties provided in General Acts 1931, page 606, and also appropriate preventive action by the courts; forth, that, such action in fact constituting the practice of law, a corporation, firm or other artificial creation cannot lawfully engage therein in any event.

I trust that this answers your inquiry.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 7, 1936.

Hon. B. L. Balch,
Superintendent of Education,
Fayette County,
Fayette, Alabama.

Statutes—

1. Act No. 94 (General Acts 1936, page 58) held not to repeal Section 9 of Act No. 300 (General Acts 1935, page 730) providing for the borrowing against the revenues of the current year.

2. Board of Education of Fayette County authorized to borrow money for paying teachers' salaries etc. and to pledge current funds under Section 9 of Act No. 300 (General Acts 1935, page 730).

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of November 10, 1936, in which you request my opinion as follows:

"The Board of Education of Fayette County desires to borrow \$20,000.00 for the purpose of paying teachers' salaries and other current expenses. The First National Bank of Fayette is willing to loan us this money if we can legally pledge the current funds due or to become due the Board of Education for the fiscal year 1936-1937, the loan to be re-

payable January 15, 1937 and March 1, 1937 and to bear six per cent interest per annum from date of issuance.

"The attorney for the Bank has expressed some doubt about the validity of such loan in view of Acts of the Legislature, approved April 6, 1936 and found on pages 58 and 69 of said Acts. This attorney's doubts and uncertainties are mainly based on Section 25 of said Act which is the repealing clause and also on Section 18 thereof. One question raised is the general provisions in Section 25 repealing all laws inconsistent with the provisions of this (1936) Act; following which is excepting from the provisions thereof Sections 10 to 14 of 1935 Acts, page 728, until October 1, 1936.

"It is under the provisions of Act No. 300, Section 9, page 730 of Acts 1935, approved September 2, 1935, that we desire to obtain and secure this loan.

"Will you please advise if, in your opinion, this can be legally done so that the Bank which makes the loan will be duly protected?"

In my opinion, the Board of Education of Fayette County may lawfully borrow the desired funds under Section 9 of Act No. 300 (General Acts 1935, page 728) and pledge the current revenues of the fiscal year therefor as provided by said section.

Act No. 94 (General Acts 1936, page 58) to which you have directed attention, purports to repeal "all laws and parts of laws, general or local, inconsistent with the provisions" of said Act. Sections 18 and 25 of Act 94 provide as follows:

"Section 18. **EXCLUSIVENESS OF THIS ARTICLE.**—No warrants payable in any fiscal year later than the fiscal year in which they were issued shall be issued on or after October 1, 1936, except in accordance with the provisions of this Act. Warrants may, however, be issued by any county or city board of education at any time prior to October 1, 1936, in accordance with the provisions of No. 300 of the Acts of 1935, approved September 2, 1935, and Sections 281 and 286, inclusive, of the Alabama School Code of 1927, as amended by No. 507 of the Acts of 1935, approved September 13, 1935, without regard to any provisions of this Act."

"Section 25. **REPEAL.**—No. 302 of the Acts of 1935, page 735, approved September 2, 1935, and Section 136 of the Alabama School Code and all laws and parts of laws, general or local, inconsistent with the provisions of this act are hereby repealed; provided, however, that Sections 10, 11, 12, 13, and 14 of No. 300 of the Acts of 1935, page 728, approved September 2, 1935, and Sections 281-286, inclusive, of the Alabama School Code as amended by No. 507 of the Acts of 1935, approved September 13, 1935, page 1090, shall remain in full force and effect until October 1, 1936, and until such date shall provide an alternative authority for the issuance of warrants by county and city boards of education."

The question, therefore, which necessarily confronts us is whether or not Section 9 of Act No. 300, *supra*, is in such conflict with Act No. 94 as to come within the repealing clause above cited. It is my opinion that Section 9 is not repealed by Act No. 94. Section 9 is as follows:

Section 9. FUNDS MAY BE BORROWED AGAINST REVENUES OF CURRENT YEAR.—Any county board of education or any city board

of education shall have authority upon the recommendation of the county superintendent of education or city superintendent of education, as the case may be, to borrow money on the credit of the school fund of that county or city to meet the salaries of teachers and other current expenses when the current funds on hand are not sufficient to meet the same, and as security therefor, to pledge the current revenues of the current fiscal year. It shall be the duty of the county board of education and the county superintendent of education or city board of education and city superintendent of education to secure such a loan if practicable, when the current funds on hand are not sufficient promptly to pay teachers' salaries and other current expenses. All such current loans shall be due and payable not later than the end of that fiscal year. Provided however, that the county board of education or the city board of education may issue certificates of indebtedness for payment of current expenses which are due when funds on hand are not sufficient to pay such obligations and when an adequate loan cannot be secured. Such certificates of indebtedness shall become due and payable, not later than the close of the fiscal year in which they are issued and shall pledge the current revenues of that fiscal year. At no time shall loans be secured or certificates of indebtedness be issued for current expenses during any year which shall pledge school revenues of any other fiscal year. The amount which is borrowed, either by loan or certificate of indebtedness, shall at no time exceed one-third of the sum paid for all current expenses, including teachers' salaries during the preceding school year. Boards of education shall have authority to pay interest at the rate of not exceeding six per cent (6%) per annum on such loans or such certificates of indebtedness as may be issued."

It is a well known legal principle that in interpreting a law it is legitimate to take into consideration the history which led up to its enactment, the surrounding circumstances and the ends intended to be accomplished thereby. *Prowell v. State*, 142 Ala. 80, 39 So. 164. In this particular instance we note that Act No. 94 was passed with the express intention of so regulating school warrants, school finances etc. as to bring the provisions of Act No. 300, passed by the 1935 Legislature, within the rulings announced by the Supreme Court of Alabama in the Opinions of the Justices found in 164 So. 572 and 165 So. 100. The 1935 Act appears to have been really composed of two component parts, the first part establishing a budget system and providing for the preparation of budgets for each county and city school system, etc, while the second part, beginning with Section 10, provided for the issuance of certain warrants to be paid with the use of pledged tax fund. That the expressed intention of the Legislature was to amend or repeal Sections 10, 11, 12, 13 and 14 of Act No. 300 may be seen from the statement contained in Section 25 of Act No. 94 to the effect that these sections should remain in full force and effect until October 1, 1936, or until otherwise provided by the Legislature. This clearly shows that Act No. 94 was calculated to supplant these sections.

Some question has arisen as to whether the doctrine "*inclusio unius est exclusio alterius*" should not be applied to Section 25 of Act No. 94, inasmuch as it is said that the Legislature has, by expressly mentioning Sections 10, 11, 12, 13 and 14 of Act No. 300 shown an intention to repeal all other parts of said Act. The maxim "*inclusio unius est exclusio alterius*" expresses a rule of construction and not of substantive law, and must be used only as an aid in discovering the legislative intent when it is not otherwise manifest.

City of Shreveport v. Price, 77 So. 883 (La.). Thus we see that the only question remaining is whether Section 9 of Act No. 300 is actually in fact in conflict with the provisions of Act No. 94.

An examination of Section 9 readily reveals that it provides only for the borrowing of funds against the **revenues of the current year**. It authorizes loans to provide funds to meet the salaries of teachers and other current expenses when current funds on hand are insufficient therefor and it further provides that there may also be issued certificates of indebtedness for the payment of which current school revenues may be pledged. It does not authorize long time loans, nor does it authorize the pledging of tax funds levied over a designated period of years for school purposes. This then is the pivotal distinction, that Act No. 94 deals exclusively with the issuance of school warrants, etc., which are to be backed by the pledge of monies derived from taxes levied over a designated period of years, while Section 9 deals only with the borrowing of funds against the revenues of the current year. There is no conflict, in my opinion, between the two.

The premises considered, I, therefore, am of the opinion that Act No. 94 of General Acts of 1936 does not repeal Section 9 of Act No. 300 of the General Acts of 1935, and that consequently the Board of Education of Fayette County may lawfully pledge the current funds for a loan to be payable within the year, as provided by Section 9, *supra*.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 14, 1936.

Mrs. C. F. Hart,
Tax Collector,
Covington County,
Andalusia, Alabama.

Under the constitutional amendment applying to the Town of Opp (See Acts 1923, page 598), the assessment of city taxes runs concurrently with state taxes, and where such municipality has adopted ordinance, as authorized by Section 201 of the Revenue Act of 1935 or Section 3095 of the Code of 1923, the assessments for city taxes made concurrently with the state and county taxes and also the notices provided by law for state and county taxes also apply to city taxes.

Opinion by the Attorney General.

Dear Madam:

I have your letter of June 15, in which you state:

"Pursuant to Section 3095 of the 1923 Code of Alabama, the City of Opp, Alabama, has, by an ordinance, designated me to assess their municipal taxes due December 1, 1936 and to assess during the subsequent years. Will you please give me a ruling on the following questions:

"1. In making the assessments for the city taxes due December 1, 1936, shall I use as a basis the state valuations which were assessed as of

October 1, 1934, and the taxes for which were payable October 1, 1935, or shall I use the valuations which were assessed October 1, 1935 and the taxes for which become due October 1, 1936? Section 216 of the Constitution limits the rate to a given percentage of the value of the property as assessed for state taxation during the **preceding year**. What is meant by 'preceding year' and which one of the above valuations must I take as a basis for assessing the City of Opp taxes which become due December 1, 1936?

"2. If the assessments are made pursuant to Section 2095 of the 1923 Code, am I governed by the provisions of Section 2124 of the 1923 Code of Alabama with reference to returning the assessment to the City Council in order that the City Council may fix a day to hear objections as prescribed by said Code?

"3. If I am not governed by the provisions of Section 2124 and no notice is required by the Council that a day has been fixed to hear objections, is it necessary for me to give any notice of any kind that the assessments have been completed and that objections will be heard? If such notice is required, please inform me what kind of notice should be given.

"4. Is it necessary for me to make any report or return of said assessments to the County Board of Revenue in order that they may hear and determine objections and if I am required to make a report or return to the County Board of Revenue what form of procedure should I follow in making said report and what kind of notice is necessary to be given? Is it necessary for the Board of Revenue to give any notice to said assessments if I am required to make a return to them?"

I have several helpful letters from Hon. Bowen Simmons, City Attorney of Opp, Alabama, with reference to your request, and a number of requests from other tax officials. I am enclosing a copy of opinion to Hon. A. D. Sherrill, Tax Collector of Colbert County which answers a number of your inquiries.

Upon examination I find that city taxes for the Town of Opp are levied under the provisions of a special constitutional amendment. (See Acts 1923, p. 598). This amendment, in part, provides that the Town of Opp and certain other municipalities "shall have the power and right in any one year to levy and collect a tax of one-half of one per centum on property situated therein based on the valuation of such property as assessed for state taxation for the tax year ending on the 30th day of September next succeeding the levy."

It is apparent that this provision was written for the purpose of changing the provision of Section 216 and authorizing the levy by these named towns of municipal taxes based on the state assessment for the current year and it would, therefore, follow that in the assessment of taxes you should follow substantially the same machinery as that for state and county taxes.

Answering your questions specifically, it would appear that in making assessments for city taxes due December 1, 1936, you would use as a basis the state valuations which were assessed as of October 1, 1935, and on which state taxes would become payable October 1st, 1936.

Answering question two it is my opinion that there is no necessity to return the assessments to the city council where the assessments are made under Section 201 of the Revenue Code of 1935 or Section 3095 of the 1923 Code.

Answering question three it would seem that the notice issued for state and county taxes would be sufficient to the taxpayer for city taxes as the valuation is identical.

Answering question four I do not think in making these assessments for city taxes you are required to make any other report to the Board of Revenue, nor are you required to take any further action than that required for state and county taxes.

While it does not particularly apply to you, I think it advisable to call your attention to the opinion to Mr. Sherrill holding that the due date of municipal taxes remains December 1st and that he is not authorized to sell property to the State for city taxes.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 14, 1936.

Hon. Eugene H. Hawkins,
Judge of Probate,
Jefferson County,
Birmingham, Alabama.

As to the Probate Office, the phrase "Public record" as used in Section 14 of Act No. 240, S. 104, approved June 6, 1931 (General Acts 1931, p. 280) means any paper or court order which is recorded in that office.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of recent date in which you state as follows:

"Please refer to Section 14, of the Veterans' Guardianship Act, Acts of the Legislature of 1931, page 280, and advise whether or not under said Section, it is the duty of this office to furnish certified copies of letters of administration and guardianship and other court orders, without charge to the applicant.

"The question in my mind is whether this Section includes court proceedings, or whether it refers to such records as birth certificates, registration certificates and marriage records."

In my opinion your question should be answered in the affirmative.

Section 14 of Act No. 240, S. 104, approved June 6, 1931 (General Acts of Alabama, 1931) provides as follows:

"Section 14. Whenever a copy of any public record is required by the Bureau to be used in determining the eligibility of any person to

participate in benefits made available by such Bureau, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting in his behalf or the representative of such Bureau with a certified copy of such record."

In regard to the probate office, it is my opinion that the phrase "public record", supra, means any paper or court order which is recorded in your office.

"A record is not a public one unless it can be inspected by any person interested. *Keefe v. Dowell*, 42 Atl. 345, 92 Me. 151."

Words and Phrases, First Series, Vol. 6, p. 5818.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 14, 1936.

Hon. Henry W. Naish,
Treasurer,
Shelby County,
Columbiana, Alabama.

Counties can legally pay for the use of sanitary sewerage system operated by a city.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of recent date which is as follows:

"The town of Columbiana installed a sanitary sewer system several years ago and assessed the property on it along same for payment of installation. At the time they assessed the jailhouse property and the Courthouse property of Shelby County to help take care of installation. A previous ruling of the Attorney General holds that it is not a legal assessment as you cannot sell county property for this assessment.

"At the present time the town of Columbiana is trying to collect a rental on this sewerage on the above mentioned county property. Please advise if this rental is a legal claim and if I would be justified in paying same in case the Board of Revenue should issue a warrant for same."

I am of the opinion that your question should be answered in the affirmative.

The opinion of the Supreme Court in the case of *City of Huntsville v. Madison County*, 166 Ala. 389, is not, in my judgment, controlling of the question here presented.

There are numerous instances where municipalities have constructed and now operate their own waterworks systems, and where the county governments purchase water from the municipalities. I can see no difference from the situation in the instant case than that in the case of the county paying for water.

A municipality can, under the power to enact health regulating ordinances, require the county to provide for disposal of sewage.

The county could, of course, install its own sewage disposal system, but in the event they elect to use the facilities furnished by the municipality, I am of the opinion that they are liable for the rent in the same manner as any other user might be.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 15, 1936.

Hon. R. H. Williams,
Judge of Probate,
Marshall County,
Guntersville, Alabama.

Elections—Justices of the Peace and Constables—Persons, otherwise qualified, elected to the offices of Justices of the Peace and Constables, in the General Election held in November, 1936 by their names being written in on the General Election ballot are duly and legally elected to said office or offices and the canvassing board should so certify them.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of November 6, 1936 as follows:

"I will thank you for your opinion on the following at your earliest convenience:

Several precincts in this County elected Justices of the Peace and Constables at Tuesday's election by writing in their names on the General Election ballot. Is an election by this method legal and should the canvassing Board of Marshall County certify these parties as elected officials?"

I call your attention to Section 417 of the Code of Alabama 1923 which reads as follows:

"COUNTY OFFICERS; WHEN ELECTED.—One coroner, county commissioners or board of revenue of whatever number composed, or courts or boards of like jurisdiction, one tax assessor, one tax collector, one county treasurer in all counties having a county treasurer, two justices of the peace and one constable for each election precinct shall be elected on the first Tuesday after the first Monday in November, 1908, and ever fourth year thereafter."

This provision of law clearly shows that the general election held on the first Tuesday after the first Monday in November, 1936 was the election at which Justices of the Peace and Constables should have been elected. Opinions of the Attorney General, Quarterly report, Vol. 3, p. 143.

As to whether or not persons may be elected Justices of the Peace and Constables by their names being written in on the general election ballot, I

quote as follows from an opinion of the Supreme Court in the case of Garrett v. Cunningham, 100 Sou. 845:

"It is provided that, if an elector desires to vote for each and every candidate for one party for whatever office to be nominated, he shall indicate the same by making a crossmark (X) 'in the circle under the name of the party at the head of the ticket.' Code Sec. 381. Provisions relative to voting for one candidate not on the party ticket are contained in Section 382 of the Code, or for two or more candidates on different tickets. Code Sec. 384, or when straight ticket does not contain the names of all officers, Code Sec. 385, or to voting for a person whose name is not on a ballot, Code Sec. 386, which reads as follows:

'If the elector desires to vote for any person whose name does not appear upon the ballot, he can so vote by writing the name in the proper place on the blank column.'"

The sections of the Code referred to in the above quotation are to certain sections of the Code of Alabama, 1907, namely: Sections 381, 382, 384, 385 and 386. These Code sections now appear in identical form in the Code of Alabama of 1923 as Sections 471, 472, 474, 475 and 476 respectively and are still the law of the State of Alabama on this subject at the present time.

Therefore, it is my opinion that persons, otherwise qualified, who are elected Justices of the Peace and Constables, at the General Election held in November, 1936 by their names being written in on the General Election ballot were duly and legally elected and that they should be certified by the Canvassing Board.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 16, 1936.

Hon. John C. Coleman,
Brigadier General,
The Adjutant General,
The Adjutant General's Department,
Montgomery, Alabama.

National Guard—Claims of officers and enlisted men for personal injury, and claims of personal representatives for their deaths, while engaged in active military service of the State, are not within the jurisdiction of the State Board of Adjustment. (Acts 1936, p. 105, Sections 39, 118).

Opinion by Assistant Attorney General Rowe.

Dear Sir:

This will acknowledge receipt of your letter of November 4, 1936, in which you request my opinion as follows:

"If a member of the Alabama National Guard has a claim for personal injury, or his Estate for his death, arising in line of duty while en-

gaged in the active military service of the State, against the State of Alabama, should this claim be presented before the State Board of Adjustment or the Military Advisory Board."

In my opinion the State Board of Adjustment does not have jurisdiction of such claims.

"Active Military Service of the State" was defined by the Military Code of 1931 (Section 39, Acts 1931, page 698) as follows:

"Officers, Warrant Officers, and enlisted men employed under orders of the Governor in recruiting, making tours of instruction, inspection of troops, Armories, storehouses, camp sites, rifle ranges and military property, sitting on General, Special, and Summary Courts-Martial, and Deck Courts, Boards of Examination, Courts of Inquiry, or Boards of Officers, making and assisting in physical examinations, shall be deemed to be in the active military or naval service of the State when it is so specified in orders. Orders shall specify in every case if pay is to be allowed and what expenses incident to travel are authorized. In the discretion of the Governor, ordered Armory drills and other military exercise and training, and periods of annual field training ordered and authorized by competent authority, may, under such rules and regulations as the State Military Advisory Board may prescribe and the Governor may approve, be construed as 'In the Active Military Service of the State.'"

See also Code of 1923, Section 1584; Code of 1928, Section 1600(57).

Payment of claims for injury or death of members of the National Guard in Active Service of the State was provided for by Section 108 of Military Code of 1931 (Acts 1931, p. 728) as follows:

"DEATH IN THE ACTIVE MILITARY SERVICE OF THE STATE: In the case of injury received in line of duty in the active service of the State resulting in death, the dependent members of the family of the deceased, if there be such, shall receive the same compensation as is provided by the Workman's Compensation Law of this State; the earnings of the deceased in his civil vocation being the basis of his compensation, but in no case shall the basis for compensation be less than the pay that the deceased was earning in the active military service of the State. The compensation under this Section shall be paid out of the General Treasury from monies not otherwise appropriated, when not paid by a bonding company.

"PERMANENT DISABILITY IN THE ACTIVE MILITARY SERVICE OF THE STATE: In the case of a soldier or sailor being wounded or disabled in the active military service or naval service of the State, as a direct result of such service, the disability being of a permanent nature, in order that the soldier or sailor may be able to receive the benefits of the State Industrial Rehabilitation Law, the State shall bear the expense of transportation, subsistence, and shelter of the soldier or sailor during the period of treatment. The total sum allowed for subsistence and shelter not to exceed fifty dollars (\$50.00) per month, and the actual cost of transportation from his home to and from the place of treatment. The compensation paid under this Section shall be paid out of the General Treasury from monies not otherwise appropriated, and all claims not made within a period of one year from the date of alleged injury, or time

of contracting the alleged disability, such time to be deemed the end of the period of active duty of such claimant, shall be barred."

See also Code of 1923 Sections 1589-90, Code of 1928, Sections 1600 (67).

The jurisdiction of the State Board of Adjustment, conferred by Section 2 of Acts 1935, p. 1164, is, insofar as is pertinent to this inquiry:

"* * * also, to hear and consider any claim for personal injuries or death of any **employee** of the State of Alabama, or its commissions, boards, agencies or institutions arising out of the course of his employment, or sustained while engaged in the business of the State of Alabama or any of its boards, institutions, agencies or commissions, and also any claim for personal injuries or death of any convict."

A member of the National Guard engaged in active service of the State is not an "employee" of the State or of any of its agencies.

Prior to the Act providing for the State Board of Adjustment, the Legislature had provided for ascertainment and payment of claims against the State for injury to or death of its soldiers and sailors while engaged in active service of the State. In my judgment, the Legislature did not intend to change the method so provided. This view is further supported by the fact that the Legislature, in revising the Military Code of 1931, by the enactment of the Military Act of 1936 (Acts, Extra Session, 1936, p. 105-165) incorporated therein Sections 39 (p. 116) and 118 (pp. 142-143) which are substantially the same as Sections 39 and 108, respectively, of the Military Code of 1931, *supra*.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 21, 1936.

Hon. H. J. Brogden,
Judge of Probate,
Covington County,
Andalusia, Alabama.

Taxation—

Redemption of Real Estate—Under facts stated only way property may be redeemed is by strict compliance with sections 271 and 272 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I acknowledge receipt of your letter of October 16, 1936, in which you state:

"Petitions were presented to me by Mrs. C. E. Jackson and Gus J. Bryan, through their attorneys, Messrs. Powell & Fuller, copies of which are hereto attached. These matters have been presented to the State Tax Commission and to this office. Applications for redemption have

been made to this office, and as I understand, the State Tax Commission, prior to June, 1936, and offers to pay the taxes assessed against the property. The applications were refused by me, and as I understand, by the State Tax Commission, on the ground that to redeem the applicant would be required to pay their pro rata share of \$26,000.00 personal property assessment of the American Bank & Trust Company. In accordance with the instructions of the State Tax Commission's local agent, Dr. G. L. Gresham, in this County, the matter was submitted to the State Tax Commission for the purpose of obtaining an opinion from the Attorney General's office. The State Tax Commission advised me to present the matter to you as Probate Judge. The facts, in addition to those set out in the application for redemption, are substantially as follows:

"The American Bank & Trust Company, a banking corporation, assessed its taxes January 1, 1931, and went into voluntary liquidation in November, 1931, and continued in voluntary liquidation until 1933. The tax assessment included a small amount of tangible personal property, real estate of about ten thousand dollars (\$10,000.00), and about twenty-six thousand dollars, (\$26,000.00) of capital stock assessed.

"There has been partial redemptions of various parcels of land sold as property of the American Bank & Trust Company. With the first partial redemptions the entire cost was paid. Thereafter, for sometime, other parcels were redeemed from time to time, paying the taxes according to the assessment of the parcels of land redeemed, and proportionate part of personal property tax.

"Now there are submitted to me for redemption two separate petitions for redemption, and the tender made for the payment of the taxes according to the amount alleged to be due, which amounts have heretofore and prior to June 20, 1936, been tendered and refused. The applicants for redemption insist that the American Bank & Trust Company never owned the title, legal or equitable, to the property in question. Their insistence is, as I understand, substantially as follows, on which I shall appreciate an opinion from the Attorney General.

"1. The American Bank & Trust Company was not the owner of the property at the time of the assessment.

"2. That it had no title to the property at the time it was assessed for taxes.

"3. That although the American Bank & Trust Company had taken temporary possession of the property, its possession was wrongful, and has been judicially so determined.

"4. That the tax sale as to the property in question was void.

"5. That the Tax Collector could sell no higher and better title than the American Bank & Trust Company had, and since it had no title, then none could pass by the sale.

"6. That the owners of the property would be liable for the reasonable taxes, and the property might be liable to, or subject to, an assessment as escape property, and computation of the taxes according to the value of the property.

"7. The description as to certain parcels of the land is erroneous in describing the property actually owned by the petitioner for redemption.

"The American Bank & Trust Company assessed its other property with its stock, as provided for a corporation assessment. The stock constituted the greater portion of the assessment, same being assessed as personal property."

You request my opinion

"Can the above parties **redeem** their property from the tax sale without paying the pro rata part of the personal property taxes?"

In my opinion your question should be answered in the negative. The only way the parties may redeem their property through your office is by a strict compliance with Sections 271 and 272 of the 1935 Revenue Act, which provide as follows:

"Section 271. When distinct lots or parcels of land have been included in one assessment and sold for taxes under one decree, any person including the owner, whose interest in one or more of such lots or parcels is such as to entitle him to redeem, may redeem the lots or parcels in which he has such interest, without redeeming all of said property, provided that any owners desiring to redeem any one or more parcels of land must also pay all tax on personal property assessed against him in said assessment, together with all cost of court and advertising fees.

"Section 272. A person desiring to redeem any separate lot or parcel of land as authorized by the preceding section, must file with the judge of probate application in writing, under oath setting forth the date of the decree, the name of the defaulting taxpayer against whom the same was rendered, the description and character of each lot or parcel of land included in the decree and the assessed value thereof, if separately valued in the assessment, or if not separately valued, stating that fact, and stating the assessed value of the whole of the lands, a description of the lot or parcel which the application seeks to redeem, and if not separately valued in the assessment, stating the value thereof at the time of the assessment, the nature of his interest in such lot or parcel; and such applicant must deposit with the judge of probate a sum of money which bears the same proportion to the amount of taxes, interest and costs which would be required to redeem all the lands included in the decree that the value of such lot or parcel, as separately assessed, or if not separately assessed as ascertained by the judge of probate, bears to the value of the whole of the lands included in the decree, and in addition thereto, such applicant must deposit the amount of proportionate costs and officers' fees which may have accrued upon such assessment and sale."

Under the facts as stated in your letter, the amount of taxes, as provided in Section 272, *supra*, means all the taxes due on the real and personal property including the capital stock of the American Bank & Trust Co. Therefore, the parties seeking partial redemption through your office are required to pay their proportionate share of the personal property tax.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 21, 1936.

Hon. J. Percy Oliver,
Probate Judge,
Tallapoosa County,
Dadeville, Alabama.

Act No. 33, H. B. 119, approved February 8, 1935, not a limitation of powers theretofore possessed by a trustee, executor, administrator, guardian or one acting in other fiduciary capacity.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of some time back which is as follows:

"I am in receipt of a copy of an informal opinion rendered to Hon. Wm. W. Kelly, Veterans Administration, Tuscaloosa, Alabama, in regard to investment of funds of a ward by the guardian. The opinion appears to have been written by Mr. Thomas S. Lawson, a member of your staff. I would like to have an official opinion from your office on this matter. The only question involved is whether or not, under H. B. 119—Welch, Acts 1935, p. 65, is an investment by a guardian, trustee, executor or administrator, or one acting in any other fiduciary capacity, of funds, where approved by the court having jurisdiction of the matter, unauthorized?

"Does said Act mean or even intimate that such an investment, where approved by the Court, would be unauthorized?

"Are such investments, where approved by the Court, limited to (a), (b), (c) and (d) as set forth in said Act?"

In my opinion the Act referred to in your letter (Act No. 33, H. B. 119, approved February 8, 1935) does not limit the powers theretofore possessed by a trustee, executor, administrator, guardian or one acting in other fiduciary capacity. It was intended to give to those persons named additional authority. The powers therein conferred are in my judgment cumulative to those already possessed.

In my judgment, the Act above mentioned, was enacted principally for the purpose of extending the powers of trustees rather than guardians as under the provisions of Section 8149, Code of Alabama, 1923, guardians possessed such powers.

Subdivisions (a), (b), (c) and (d) of said Act, as I have said before, are not limitations but additional types of investments.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

December 29, 1936.

Hon. Henry J. Garrett
Clerk, Circuit Court,
Hale County,
Greensboro, Alabama.

Preparation of record for appeal to Supreme Court covered by Section 7278, Code of Alabama of 1923.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of October 22, 1936, which is as follows:

"Will you please advise me the legal charge allowed Clerks of the Circuit Court in preparation of transcripts to the Supreme Court.

"Section 6102 of the Code of 1923 sets out that the legal charge is ten cents a hundred words for the original and five cents a hundred for copies thereof. Section 6108 of the Code of 1923 sets out that the charge for office copy shall be \$2.50. Section 7278 of the Code of 1923 sets out that record for Supreme Court for each one hundred words fifteen cents and each additional copy thereof for each hundred words five cents.

"We have at the present time a case which is ready for settlement and the question of legal charge has arisen and I will appreciate an early reply giving me your opinion."

The Court of Appeals in the case of **Middleton v. General Water Works & Electric Corp.**, 149 So. 352, has passed on the very question about which you inquire in your letter and held that Section 7278, *supra*, was controlling in view of the fact that it was the last enactment of the Legislature on the subject. The Supreme Court denied a petition for a writ of certiorari, thus concurring in the opinion rendered by the Court of Appeals.

That part of the opinion of the Court of Appeals pertinent to your inquiry is as follows:

"The sections above referred to pertain to the same subject and are in conflict. They were brought forward into the Code 1923. The statute passed and approved February 15, 1919, Gen. Acts of Ala. 1919, p. 84 (Section 2) was brought forward as section 6102. The latter statute, approved September 30, 1919, General Acts of Alabama 1919, p. 884, was brought forward in the 1923 Code as section 7278 thereof. There is no field of operation for both of these statutes because of the manifest and patent conflict. Where this is true, it becomes necessary to ascertain the legislative intent, and all particular rules for the construction of such provisions must be regarded as subservient to this end. The well-settled principle is that the last expression of the legislative will is the law in case of conflicting provisions of the statute on the same subject, and the last enacted in point of time prevails. We are, therefore, of the opinion that the item of cost in controversy was properly taxed by the

clerk under section 7278 of the Code 1923, and that the court committed no error in this connection. It follows that the judgment appealed from must be affirmed."

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 29, 1936.

Hon. Jacob L. Kaufman, Chairman
Alabama Unemployment Compensation Commission,
Montgomery, Alabama.

Alabama Unemployment Compensation Act—Section 2(g) of Alabama Unemployment Compensation Act (Acts 1935 p. 950) as amended by Act No. 194, Acts 1936 p. 225, broadening the exclusions from the term "employment" is, under the circumstances, to be construed as if the amended provision had been embodied in the original Act.

Opinion by the Attorney General.

Dear Sir:

I wish to acknowledge receipt of your letter of November 19, 1936, which is as follows:

"Section 2 (g) of the Alabama Act No. 447 which creates the Alabama Unemployment Compensation Commission defines employment. In the definition of employment therein, there are several kinds of services which are excluded from the definition of "employment."

This Act was approved September 14, 1935. On April 21, 1936, an amendment to the said Act was approved, a part of which said amendment excluded from the definition of employment thereunder "service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as the Railway Labor Act, as amended or as hereafter amended; service performed by those engaged as solicitors or agents for insurance companies."

Acting thereunder, this Commission passed the following rules with reference to employer contributions for wages paid employees from January 1 through April 20, 1936:

'A subject-employer, engaged in interstate commerce and subject to the Act of Congress, known as the "Railway Labor Act", shall be liable for contributions based on wages paid by him for services performed for him from January 1, 1936, through April 20, 1936.'

* * * * *

'Any insurance company which was a subject-employer on January 1, 1936, under the provisions of the Act before amendment of April 21, 1936, shall be liable for contributions on wages payable for services performed for it by employees engaged as solicitors or agents from January 1, 1936 through April 20, 1936.' (Rules 702 and 703 of our Rules & Regulations).

"I would like your opinion as to whether these herein above mentioned Rules are valid and legal interpretations of the Alabama Unemployment Compensation Act, as amended."

The amendment referred to (Act No. 194 Acts 1936, p. 225) completely rewrote Section 2 (g) of the original act (Acts 1935, p. 950) in practically identical language, the only change made being the addition of another exclusion from the scope of the term "employment". In pertinent part the Act provides as follows:

"The term 'Employment' shall not apply to:—

* * *

6. "Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as The Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as solicitors or agents for Insurance Companies."

The purpose and effect of the Alabama Unemployment Compensation Act, generally is to provide a reserve fund composed of required contributions from employees and employers alike and which must be used exclusively for the purpose of paying reasonable benefits to subject employees in the event of their future unemployment. It is not a taxing statute for the general uses of the State. With respect to the contributions to be paid to the fund by subject employers the act provides, in Section 4 (a), that "On and after the first day of January 1936, contributions shall accrue and become payable by each employer then subject to this Act***." And with reference to the due date of such contributions this section further provides,—The contributions required hereunder shall be paid by "each employer in such manner and at such times as the Commission may prescribe.***" These provisions must be read together, and the effect of them is that the required contributions actually become due to be paid, and thereafter delinquent, upon the date fixed therefor by the Commission.

At the time the amendment in question was enacted and approved the Commission had not fixed a due date for the filing of reports and payment of contributions by insurance companies and carriers here involved. The amendment provides expressly "The term 'employment' (subject to the Act) **shall not apply to** the services and employment here in controversy, the effect being to exclude such services both from the obligation to pay contributions and from the right to participate in benefits under the Act. The amendment carries no saving clause with regard to past or pending liabilities, rights or penalties. In the Act as originally passed the legislature reserved the right to amend all or any part of the Act at anytime, Section 18.

A closely analagous situation was presented to our Supreme Court in *Blake vs. State ex rel Going*, 178 Ala 407, 59 So. 623. In that instance the legislature had passed an Act in 1909 providing, in substance, that on January 1st of each year thereafter Clerks of Courts should pay over certain unclaimed witness fees to the State Treasurer. In 1911 the legislature passed another act in identical language except to substitute the word "County" for the word "State", thus requiring such clerks to pay such fees to the County Treasurer instead of the State Treasurer. No reports or payments had meanwhile been made by such clerks to the State Treasurer, and the question was whether the 1911 Act requiring payments to be made to the County Treasurer prevailed as to such fees as should have been paid over to the State Treasurer

under the Act of 1909. The Act of 1911 contained no saving clause of pending proceedings or claims and repealed the Act of 1909. The court held the Act of 1911 to prevail, saying:—

"It is a general rule, also, that when a Statute is repealed it stands as if it had never existed, except as to vested rights which have accrued under its operation. Under the Act of 1909 the State had acquired no vested rights in the fees in question. Doubtless it had, prior to the Act of 1911, a right to compel respondent to report and pay them over to the State Treasurer as their appointed custodian. But, except as it had been already executed, the influence and operation of the Act of 1909 was completely nullified by its repeal in 1911. "The Legislature has full power to take away by statute, rights not vested, which have been conferred by statute. If the repealing statute is general and unconditional, without a saving of pending proceedings and prosecutions, these fall with the Statute which may have authorized them, *Luke vs. Calhoun County*, 56 Ala. 415. This principle seems clearly applicable to the two Acts under consideration."

I am of the opinion that the situation of the employers embraced within the broadened scope of the exclusions from 'employment' contained in the amendment in question, under the circumstances set out, comes within the principles above quoted. 59 C. J. 1096. See also *Hertz, Collector vs. Woodman*, 218 U. S. 205; *Blair vs. Chicago*, 201 U. S. 400; *United States vs. La Franco*, 282, U. S. 563.

I am therefore of the opinion that Section 2 (g) of the Alabama Unemployment Compensation Act (Acts 1935, page 950) as amended by Act No. 194, Acts 1936, p 225, broadening the exclusions from the scope of the term 'employment' made subject to the Act is, under the circumstances, to be construed as if the amended provision had been embodied in the original Act. It therefore follows that, in my opinion, the rules 702 and 703 of the Commission, set out above, are not proper legal interpretations of the Act as amended.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

December 29, 1936

Hon. W. W. Brooks,
Financial Adviser to the Governor of Alabama,
Capitol.

Opinion by The Attorney General.

Dear Sir:

I have your letter of December 21, 1936 as follows:

"On Nov. 8, 1934, the State Warrant Commission issued Warrant Refunding bonds in the sum of \$280,000.00 and delivered the same to the State Treasurer, taking his receipt for the same on November 14, 1934, stating that bonds were to be delivered to the institutions for the appropriations made for the institutions and to be delivered to the institutions only after requisition had been made by the State Board of Education.

"Bonds so held by the State Treasurer to pay appropriations were \$100,000.00 to Alabama School of Trades and Industries, Gadsden, and \$180,000.00 to the Daphne Normal School, Daphne, Alabama. The Board of Education has requisitioned \$45,000.00 of the bonds held by the State Treasurer, requesting that refunding bonds be sold for the purpose of refunding the \$45,000.00 Warrant Refunding bonds.

"Please advise if refunding bonds can be sold for the purpose of refunding the Warrant Refunding bonds in the sum of \$45,000.00, as provided in Act No. 50, page 27, of the Alabama General Laws passed at the regular session of 1935."

You state that the Board of Education has requisitioned \$45,000.00 of the bonds mentioned in your letter, and now held by the State Treasurer, and has requested that Refunding Bonds be sold for the purpose of refunding the \$45,000.00 Warrant Refunding bonds.

You inquire whether refunding bonds may be sold for the purpose of refunding the Warrant Refunding bonds in the sum of \$45,000.00, as provided in Act No. 50, page 27 of the Alabama General Laws, passed at the Regular Session of 1935.

These bonds were issued under and pursuant to the authority conferred by a constitutional amendment voted and adopted by the people of Alabama on July 18, 1933, and proclaimed by the Governor of Alabama as a part of the Constitution of the State of Alabama on August 2, 1933, and said amendment being known now as Article 23 of the Constitution of Alabama; and pursuant also to the provisions of an Act of the Legislature of Alabama approved Feby. 8, 1935, enacted by a Regular Session of the Legislature of Alabama of 1935, the last mentioned Act providing for the refunding of outstanding Warrant Refunding Bonds of the State of Alabama issued theretofore and pursuant to authority contained in Act of the Legislature of Alabama approved April 17, 1933.

I note that the State Warrant Commission issued these \$280,000.00 of Warrant Refunding Bonds on November 8, 1934 and these bonds were delivered to the Treasurer of the State of Alabama in compliance with the appropriations made to these Institutions, to be delivered to the said Institutions after requisition had been made by the State Board of Education.

I have examined carefully the Constitution and Statutes of this State, and it is my judgment that the entire \$280,000.00 of bonds mentioned hereinabove were issued in accordance with the Constitution and Statutes of the State of Alabama, and constitute valid, general obligations of the State of Alabama, for the payment of the principal and interest of which the full faith and credit of the State of Alabama are pledged.

I am of the opinion that refunding bonds may be now sold for the purpose of refunding the Warrant Refunding bonds in the sum of \$45,000.00, as provided in Act No. 50, page 27 of the Alabama General Laws enacted at the Regular Session in 1935; and I am of the opinion that the said \$45,000.00 of refunding bonds to be released were issued in accordance with the Constitution and Statutes of this State and constitute valid, general obligations of this State for the payment of the principal and interest of which the full faith and credit of the State of Alabama are pledged.

Yours very truly,

A. A. CARMICHAEL,
Attorney General.

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